REPORT

OF THE

ATTORNEY GENERAL

OF THE

State of Florida

From January 1, 1907, to January 1, 1909

W. H. ELLIS,
Attorney General.

Tallahassee, Florida.
1909.

ATTORNEY-GENERAL'S REPORT.

STATE OF FLORIDA,
ATTORNEY GENERAL'S OFFICE,
Tallahassee, December 31, 1908.

Hon. Napoleon B. Broward,
Governor of Florida.

Sir:—

I herewith submit my biennial report covering the period from January 1st, 1907, to January 1, 1909. The growth of the State and enactment of laws by recent legislation has increased the work of this department. The great number of inquiries by local officials for the construction of the statutes governing them in the discharge of their duties has impressed me with their desire to get at the right of things. Neither the Constitution nor the statutes require the Attorney General to advise and instruct these officers; nevertheless, I have given as much attention to their inquiries as the clerical force in this office would permit and have endeavored to impress the authors of such inquiries that my opinions thus rendered could not be regarded as binding on anyone. Uniformity of action on the part of the various local governments is obviously desirable, but to make this office the official place where the information to produce such uniformity can be obtained for the mere asking, would increase the correspondence and research of the office to such an extent that the office of Attorney General would require an additional department in the capacity of a bureau of information, and many inquiries would, as they do now, affect solely the private business affairs of the writers. A number of counties have no legal adviser, and hence they apply to the Attorney General for advice as to their duties; to disregard their requests would create dissatisfaction. I have, therefore, given this feature of the work attention and have incorporated into this report a num-

ber of communications, representing a small portion of such correspondence, which I think will be of general interest.

Reports of criminal cases disposed of as required to be reported to this office by State Attorneys are omitted from this report for the reason that a number of the State Attorneys have failed to submit such reports to this office. This feature of the Attorney General's report was contained in my biennial report covering the period from January 1, 1905, to January 1, 1907. Such information merely indicates in what sections of the State crime is most prevalent as shown by the proceedings of the circuit courts and criminal courts of record, and without complete reports from all these courts for the entire two years the necessary information would be very indefinite.

The conduct of Railroad Commission cases on behalf of the Railroad Commissioners was transferred from this office to special counsel at the request of the Commissioners, which special counsel was provided for by the Legislature of 1907, Chapter 5620. All cases transferred are enumerated and set forth in my letter of transmittal to Hon. R. Hudson Burr, Chairman, dated June 15th, 1907, which letter is incorporated into and made a part of this report.

As Supreme Court Reporter, I have had printed the Fifty-second report for the June term, 1906, the Fifty-third for the January term, 1907, the Fifty-fourth for the June term, 1907, and the Fifty-fifth for the January term, 1908, covering the period of work, as such reporter, for which this report is submitted.

Respectfully submitted,

W. H. ELLIS,

Attorney General.

APPROPRIATIONS AND EXPENDITURES.

Appropriations.

For the first six months, 1907—	
Clerk	$ 450.00
Secretary	750.00
Incidental expenses	100.00
For the last six months, 1907—	
Clerk	450.00
Secretary	900.00
Incidental expenses	100.00
Books and book cases	500.00
For the year 1908—	
Clerk	900.00
Secretary	1,800.00
Incidental expenses	250.00
	$6,200.00

Expenses.

Clerk for years 1907 and 1908	$1,800.00
Secretary years 1907 and 1908	3,450.00
Incidental expenses, 1907	243.68
Incidental expenses, 1908	215.61
Books and book cases, 1907 and 1908	494.85
Balance of 1906 appropriation used in January, 1907	9 29

QUO WARRANTO.

Authority was given by the Attorney General to parties whose names are mentioned below to institute proceedings in the name of the State in quo warranto. A short statement of the purpose of each suit is given.

To W. W. Hampton, Gainesville, Florida, July 29, 1908.

To prevent J. A. Williams of Cedar Key, Florida, from interfering with any person in the free use and enjoyment of the oysters and oyster beds in Sections 18, 19, 20, 21, 28, 29, 30, 31, and all waters west of Sections 18, 19, 30 and 31, all in Township 15 South, Range 13 East, in the State of Florida. This case has not been disposed of.

To J. W. Brady, Bartow, Florida, November 16, 1908.

To require the Peninsula Telephone Company, a corporation, to show cause why its charter under the laws of Florida should not be forfeited for failure to properly perform its duties as a public service corporation. This case has not been disposed of.

CIVIL CASES.

The conduct of cases on behalf of the Railroad Commissioners has been transferred from the Office of Attorney General to special counsel for the Railroad Commissioners, as will be seen from a letter of transmittal to Hon. R. Hudson Burr, Chairman, dated June 15th, 1907, which letter will be found elsewhere in this report.

QUO WARRANTO.

State of Florida, ex rel. Attorney General, Relator.
Vs.
Tampa Water Works Company, a corporation, Respondent

The Attorney General instituted in the Supreme Court proceedings in quo warranto against the Tampa Water Works Company, March 18, 1908, alleging that the company was exercising without any warrant or authority of law the privileges and franchises of using the public streets of the city of Tampa for purposes of a system of water works. A writ was issued by the Supreme Court requiring the company to show by what warrant of authority it had used and was using such privileges and franchises. The company made return setting up facts to show its claim of right to use the franchises and privileges, and demurrer thereto was overruled on July 7, 1908, with leave to plead in fifteen days. 56 Fla. —, 47 South Rep. 358.

The Relator filed several replications to the return of Respondent, which were demurred to. The writ issued to test the *existence* of the franchise right was determined in favor of the Respondent, but demurrers to the replications with the exception of two, were overruled at the cost of the Respondent. The Court held that in view of the issues of fact tendered, the expense and inconvenience and lack of prescribed procedure for trying the issues in the Supreme Court, and the apparent adequate and expeditious remedy afforded by the statute in the trial of such cases of fact in the Circuit Court in the locality where the franchise is being exercised, the Attorney General may desire to ask for a discontinuance with leave to the City of Tampa to take appropriate action to enforce its rights in the premises in the Circuit Court.—Decision filed November 17, 1908, 56 Fla. —. This case for rehearing having since been filed by the Respondent.

MANDAMUS.

State of Florida, ex. rel. W. H. Ellis, Attorney General, Relator,

Vs.

Atlantic Coast Line Railroad Company, Respondent.

This proceeding was instituted by the relator at the January term (1907), of the Supreme Court upon petitions of patrons of respondent living along its lines of road from Palatka to St. Petersburg, principally at Ocala, Holder, Floral City, Wauchula, Inverness, Newberry, Williston, Trilby, Dunnellon, Lakeland, Bartow, Arcadia, Punta Gorda, Citronelle, Hernando, Fort Meade, Kendrick, Martel, Center Hill, Fort Myers and other places, protesting against the unsafe condition of the roadbed and tracks of respondent; insufficient rolling stock and motive power and lack of management in the distribution and transportation of its cars, stating that said respondent had failed and was failing in the performance of its duties as a common carrier, and had failed and was failing to receive freight offered to it as a common carrier and to forward the same within a reasonable time, and had failed to provide reasonable facilities for moving freight offered along its line of road, and that such failure on the part of respondent had resulted in great confusion and delay in the transportation of freight, to the great loss to the citizens, all of which the petitioners offered to prove by competent evidence.

On January 9, 1907, relator filed petition for writ of mandamus against respondent in this court upon the assurance of a large number of business men and citizens interested, particularly the Ocala Board of Trade, that they would see that all the evidence as to the physical condition of the roadbed and tracks and unsatisfactory service of respondent would be promptly furnished when needed. Respondent then filed motion to quash the writ, which was denied, and this court held that said writ would issue to compel respondent to repair its roadbed

and tracks and place same in a reasonably safe and suitable condition.

An order was made allowing relator to amend the writ and an amended writ was filed February 27, 1907; respondent again moved to quash the amended writ and also moved to strike parts of the writ from the record. The motion to strike was denied, and as to the motion to quash the court held that the relator should amend so that the writ should not undertake to dictate the dimensions of the crossties or other material to be used in the repair of the roadbed and tracks, and the respondent should have additional time in which to plead; amended writ was accordingly filed by relator, to which amended writ respondent filed answer. Relator then moved the court to compel respondent to amend its answer so as to tender an issue, which motion was granted on the 21st day of May, 1907, and the relator joined issue.

Thus an issue was made between the State and the railroad company upon the question of fact as to the physical condition of the roadbed and tracks and unsatisfactory service of respondent.

Motion to dismiss was afterwards made by the relator for the following particular reasons, quoted from the quation:

"*First*: Because the parties who agreed with relator to furnish testimony as to the physical condition of the roadbed and tracks and unsatisfactory service of respondent when same was needed have wholly failed to furnish same, although often by this relator requested so to do."

"*Second*: Because there are no funds in the State treasury at the disposal of relator that can be used to procure said testimony."

"*Third*: Because the Legislature of 1907 refused to make an appropriation to be used for procuring such testimony."

"*Fourth*: Because relator on October 31, 1907, addressed a communication to the Railroad Commissioners of Florida giving a history of the proceeding and advising of the then status of the case, requesting that said Com-

missioners have their engineer (appointed under Chapter 5622, Laws of 1907), inspect in detail the physical condition of the lines of road mentioned in said alternative writ and make notes of the condition of each mile of the said roadbed and tracks, the number of broken fishplates or angle irons, decayed and useless ties, etc., along said lines, with a view of having said engineer testify before this court as to such conditions in order that this case might be carried to a final determination, and in reply to said communication the said Railroad Commissioners advised relator (under date of Feb. 6, 1908) that inasmuch as they had more work for said engineer to do than it would be possible to finish within another year, they believed it to be their duty to keep said engineer inspecting defective parts of different roads where it was most urgent, and declining relator's application for the services of said engineer to be used as aforesaid."

"*Fifth*: Because relator is advised that since the institution of this suit and as a result thereof, the respondent has repaired its roadbed and tracks along the lines named in the alternative writ and furnished to the patrons along said lines the other reliefs sought and otherwise remedied the conditions complained of; and as a result of this proceeding this court has established in this State a principle of law, as contended by relator, highly beneficial to the State's interests and the welfare of all the people, holding among other things that the common law writ of mandamus may be issued to specifically enforce the performance of a duty imposed by law upon a railroad corporation where no other adequate remedy is provided by law, and that the power and duty of a State to require the property of a common carrier corporation devoted to the public service within its borders to be maintained in a reasonably safe and adequate condtion, and to be properly operated for rendering the public service to which the property is devoted by its corporate owner, are *inherent and reserved in the State* for the necessary protection and benefit of the lives and property within its territory."

"*Sixth*: Because the objects of this proceeding have

been fully accomplished; all the remedies sought have been afforded and the principles of law sought to be established have been adopted by this court and stand now for the use, benefit and relief of all persons under like conditions complaining."

The Board of Public Instruction for the County of Santa Rosa, Appellant,

Vs.

A. C. Croom, Comptroller of the State of Florida, and W. V. Knott, Treasurer of the State of Florida, Appellees.

On the 18th day of October, 1908, the appellant, The Board of Public Instruction for Santa Rosa County, filed an amended bill against A. C. Croom, Comptroller, and W. V. Knott, Treasurer of the State of Florida, in the Circuit Court of Leon County, seeking to enjoin them from paying out money from the General Revenue Fund of the State in satisfaction of certain claims against the State, such as furnishing and improving the Governor's Mansion, erection and building of a dormitory for the Florida Female College, erection of school buildings and improving the grounds of the University of Florida, erection of a building at the Hospital for the Insane, etc., and claiming that the public schools of Santa Rosa and other counties were entitled to priority of payment from said fund in aid of public schools which had become entitled to such aid by compliance with the terms of Chapter 5381 of the Laws of 1905. The bill named specifically the schools in Santa Rosa County, which had complied with the terms of the act, and were entitled to such aid, and alleged that the Comptroller had refused to draw warrants on the Treasurer for the sums of money which were due. On a hearing the Judge of the Circuit Court denied the temporary injunction, and an appeal to the Supreme Court was taken from such order. The Supreme Court affirmed the decree of the Circuit Court on December 19th, 1908.

Florida Railway Company, a Corporation,
Vs.
A. C. Croom, as Comptroller, et al.

Three cases have been instituted in the Circuit Court of Suwannee County by the Florida Railway Company to restrain the collection of taxes assessed against the properties of the complainant. The papers filed in these cases are enumerated below. The third case is still in progress in the Circuit Court of Suwannee County, involving practically the same questions contained in the first and second cases.

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(1)

Florida Railway Company,
Vs.
A. C. Croom, Comptroller, and J. H. Rickerson, Sheriff, Suwannee County, Florida.

Papers filed in Circuit Court, Suwannee County, Florida:

1. Bill of complaint—filed November 13, 1906.
2. Motion for appointment of an Elisor to make service upon J. H. Rickerson, also order appointing Elisor—filed November 14, 1906.
3. Affidavit of Frank Drew that he had served the defendant in error with a copy of bill, copy of notice of application for temporary injunction, a copy of notice to A. C. Croom to produce tax return of the Live Oak & Gulf Railroad Company and a copy of a notice to A. C. Croom to produce certain letters at the hearing—filed November 14, 1906.
4. Notice to A. C. Croom to produce tax return statement of the L. O. & G. Railway for the year 1905—filed November 14, 1906.

5. Notice of intention to apply on the 20th of November, 1906, for temporary injunction.—Filed November 14, 1906.

6. Notice to produce certain documents at the hearing.—Filed November 14, 1906.

7. Subpœna in chancery and affidavit of service of Elisor.—November 22, 1906.

8. Demurrer to bill of complaint by A. C. Croom.—Filed January 7, 1907.

9. Demurrer to bill of complaint by J. H. Rickerson.—Filed January 7, 1907.

10. Demurrer set down for argument by solicitors for complainant.—Filed February 4, 1907.

11. Brief of Carter & MacCallum, solicitors for complainant.

12. Exhibits "A" and "B"—tax returns of 1905.

13. Order of Judge sustaining demurrer, dated January 3, 1908.—No file mark.

14. Amendment to bill of complaint.—Filed February 3, 1908.

15. Motion for decree *pro confesso*.—Filed April 6, 1908.

16. Stipulation between counsel that the original demurrer filed to the original bill shall stand and be considered as interposed to the bill of complaint as amende dand that the decree *pro confesso* be reopened.—Filed April 25, 1908.

(2)

Florida Railway Company,
Vs.
A. C. Croom, Comptroller, J. H. Rickerson, Sheriff of Suwannee County, C. H. Land, Sheriff of Lafayette County, and J. H. Parker, Sheriff of Taylor County.

Papers filed in Circuit Court, Suwannee County, Florida.

1. Bill of complaint.—Filed November 16, 1906.
2. Motion for the appointment of an Elisor to make service on J. H. Rickerson, C. H. Land and J. H. Parker.—Filed November 13, 1906.
3. Order appointing Elisor for above.—Filed November 4, 1906.
4. Affidavit of Frank Drew that he served A. C. Croom with copy of bill and notice of application for injunction.
5. Notice of application for injunction to be presented on November 20, 1906.—Filed November 14, 1906.
6. Notice to A. C. Croom to produce copy of tax return made by complainant company.—Filed November 14, 1906.
7. Notice to A. C. Croom to produce at the hearing of application for injunction certain documents.—Filed November 14, 1906.
8. Subpoena in chancery.—No file mark.
9. Order of J. T. Wills, Judge, appointing Elisor to make service of process upon the Sheriffs of Suwannee, Lafayette and Taylor Counties.—Filed November 14, 1906.
10. Request for alias subpœna to J. H. Rickerson.—Filed December 3, 1906.

11. Appearance of J. H. Parker by Umphries & Harrell. —Filed December 3, 1906.

12. Subpœna to J. H. Rickerson and return of Elisor Nobles.—Filed December 7, 1906.

13. Demurrer of defendants to bill of complaint.—Filed January 7, 1907. Demurrers were filed in behalf of A. C. Croom, J. H. Rickerson, J. H. Parker and C. H. Land, January 7, 1907.

14. Demurrer set down for argument by complainant's solicitor.—Filed February 4, 1907.

15. Amendment to original bill.—Filed February 3, 1908.

16. Request for *pro confesso* decree.—Filed April 6, 1908.

17. Stipulation between counsel that decree *pro confesso* shall be opened and that original demurrer should stand and be considered as interposed to the bill of complaint as amended.

18. Papers marked "Exhibit 'A' and 'B,'" consisting of railway tax returns of Suwannee, Lafayette and Taylor Counties.

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(3)

Florida Railway Company,
Vs.
A. C. Croom, Comptroller, and J. H. Rickerson, Sheriff of Suwannee County.

Papers filed in the Circuit Court of Suwannee County, Florida.

1. Bill of complaint.—Filed November 7, 1908.

2. Notice to A. C. Croom and J. H. Rickerson of intention to apply to Judge at Lake City on November

5, 1908, for preliminary injunction restraining defendants from collecting the taxes assessed against the property of the complainant for the years 1906 and 1907.

3. Notice to A. C. Croom to produce at the hearing a correct copy of the tax return made by the complainant company for the years 1906 and 1907.—Filed November 7, 1908.

4. Affidavit of MacCallum, dated November 6, that he served copies of the foregoing notices on A. C. Croom and J. H. Rickerson on October 31, by mail. —Filed November 7, 1908.

5. Order of Judge granting preliminary injunction in accordance with the prayer of the bill.—Filed November 19, 1908.

6. Bond of T. P. Alston, agent of the Florida Railway Company, with United States Fidelity & Guarantee Company as surety in the sum of $5,000.00.—Filed November 19, 1908.

7. Appearance of W. H. Ellis for defendants.—December 1, 1908.

8. Copy of return of Florida Railway Company, made March 1st, 1906, and certificate of A. C. Croom as to correctness of such return.—No file mark.

9. Copy of return made by Florida Railway Company March 1st, 1907, and certificate of A. C. Croom as to correctness of such return.—No file mark.

CRIMINAL CASES DISPOSED OF.

Wyatt Brewer vs. The State of Florida, January term 1907; offense, murder in first degree; appealed from Circuit Court for Duval County; disposition, affirmed. 53 Florida, 1.

J. Danford vs. The State of Florida, January term, 1907; offense, murder in the first degree; appealed from the Circuit Court for Jackson County; disposition, reversed. 53 Fla. 4.

H. F. Douglas vs. The State of Florida, January term 1907; offense, manslaughter; appealed from the Criminal Court of Record for Orange County; disposition, affirmed. 53 Fla. 27.

Charles Harris vs. The State of Florida, January term 1907; offense, larceny and receiving stolen goods; appealed from the Criminal Court of Record for Duval County; disposition, reversed. 53 Fla. 37.

Frank Johnson vs. The State of Florida, January term 1907; offense, grand larceny; appealed from the Criminal Court of Record for Duval County; disposition, affirmed. 53 Fla. 42.

J. K. Johnson vs. The State of Florida, January term 1907; offense, assault with intent to commit manslaughter; appealed from the Circuit Court for Taylor County; disposition, affirmed. 53 Fla. 45.

Jim Kent vs. The State of Florida, January term 1907; offense, murder; appealed from the Circuit Court for Jackson County; disposition, affirmed. 53 Fla. 51.

Pleas Lindsey vs. The State of Florida, January term 1907; offense, assault with intent to murder in the first degree; appealed from Circuit Court for Santa Rosa County; disposition, affirmed. 53 Fla. 56.

F. M. Tipton vs. The State of Florida, January term 1907; offense, embezzlement; appealed from the Circuit

Court for Jackson County; disposition, reversed. 53 Fla. 69.

Charles H. West vs. The State of Florida, January term 1907; offense, manslaughter; appealed from the Circuit Court for Sumter County; disposition, reversed. 53 Fla. 77.

Fred Williams vs. The State of Florida, January term 1907; offense, rape; appealed from the Circuit Court for Duval County; disposition, affirmed. 53 Fla. 84.

Jim Williams vs. The State of Florida, January term 1907; offense, assault with intent to murder; appealed from the Criminal Court of Record for Hillsborough County; disposition, affirmed. 53 Fla. 89.

Buck Clinton and Edward Clinton vs. The State of Florida, January term 1907; offense, arson; appealed from the Criminal Court of Record for Volusia County; disposition, reversed. 53 Fla. 98.

I. W. Montgomery vs. The State of Florida, January term 1907; offense, embezzlement; appealed from the Criminal Court of Record for Duval County; disposition, reversed. 53 Fla. 115.

Emma Adams vs. The State of Florida, June term 1907; offense, murder in the first degree; appealed from the Circuit Court for Walton County; disposition, reversed. 53 Fla. 1.

Jesse Albriton vs. The State of Florida, June term 1907; offense, assault with intent to murder; appealed from the Circuit Court for Taylor County; disposition, affirmed. 54 Fla. 6.

Ed Baker vs. The State of Florida, June term 1907; offense, murder; appealed from the Circuit Court for Clay County; disposition, reversed. 54 Fla. 12.

J. E. Bowman vs. The State of Florida, June term, 1907; offense, obtaining money under false pretenses; appealed from the Criminal Court of Record for Duval County; disposition, affirmed. 54 Fla. 16.

Andrew J. Chancey vs. The State of Florida, June term 1907; offense, murder; appealed from the Circuit Court for Lee County; disposition, affirmed. 54 Fla. 20.

Sanders Cutts vs. The State of Florida, June term 1907; offense, murder in the first degree; appealed from the Circuit Court for Santa Rosa County; disposition, affirmed. 54 Fla. 21.

Henry Day vs. The State of Florida, June term 1907; offense, murder in the second degree; appealed from the Circuit Court for Hillsborough County; disposition, affirmed. 54 Fla. 25.

Elijah Davis vs. The State of Florida, June term 1907; offense, breaking and entering with intent to commit larceny; appealed from the Circuit Court for Calhoun County; disposition, affirmed. 54 Fla. 34.

Berry Edwards vs. The State of Florida, June term 1907; offense, assault with intent to murder; appealed from the Circuit Court for Liberty County; disposition, affirmed. 54 Fla. 40.

Jack Golden vs. The State of Florida, June term 1907; offense, murder in the second degree; appealed from the Circuit Court for Holmes County; disposition affirmed. 54 Fla. 43.

Ed Johnson vs. The State of Florida, June term 1907; offense, assault with intent to murder; appealed from the Criminal Court of Record for Escambia County; disposition, affirmed. 54 Fla. 45.

Harrison King vs. The State of Florida, June term 1907; offense, manslaughter; appealed from the Circuit Court for Jackson County; disposition, affirmed. 54 Fla. 47.

Dock Mack, alias Bill Mack vs. The State of Florida, June term, 1907; offense, rape; appealed from the Circuit Court for Duval County; disposition, affirmed. 54 Fla. 55.

John Marshall, Nellie Marshall and Richard Bradley vs. The State of Florida, June term 1907; offense, assault with intent to murder; appealed from the Circuit Court for Santa Rosa County; disposition, affirmed. 54 Fla. 66.

I. W. Montgomery vs. The State of Florida, June term 1907; offense, embezzlement; appealed from the Criminal Court of Record for Duval County; disposition, plaintiff in error given two weeks in which to have judge of the lower court certify to bill of exceptions. 53 Fla. 73.

Giles Morris vs. The State of Florida, June term 1907; offense, obtaining money under false pretenses; appealed from the Circuit Court for Jackson County; disposition, affirmed. 54 Fla. 80.

Emanuel Nussbaumer vs. The State of Florida, June term 1907; offense, violation of local option law; appealed from the Circuit Court for Jefferson County; disposition, affirmed. 54 Fla. 87.

Marion Oliver vs. The State of Florida, June term 1907; offense, bastardy; appealed from the Circuit Court for Duval County; disposition, affirmed. 54 Fla. 93.

George O'Neal vs. The State of Florida, June term 1907; offense, grand larceny and receiving stolen goods; appealed from the Criminal Court of Record for Duval County; disposition, affirmed. 54 Fla. 96.

John D. Sims vs. The State of Florida, June term 1907; offense, embezzlement; appealed from the Circuit Court for Pasco County; disposition, affirmed. 54 Fla. 100.

Tom Stephens vs. The State of Florida, June term 1907; offense, larceny of domestic animals; appealed from the Circuit Court for Gadsden County; disposition, affirmed. 54 Fla. 107.

J. Barney Stokes and G. Lee Stokes vs. The State of Florida; offense, murder in the first degree; appealed from the Circuit Court for Citrus County; disposition, reversed. 54 Fla. 109.

Jose Fernandez Vasquez vs. The State of Florida, June term 1907; offense, murder in the second degree; appealed from the Circuit Court for Hillsborough County; disposition, affirmed. 54 Fla. 127.

January Adams vs. The State of Florida, January term 1908; offense, murder in the second degree; appealed from the Circuit Court for Hernando County; disposition, reversed. 55 Fla. 1.

John Collier vs. The State of Florida, January term 1908; offense, entering without breaking with intent to steal; appealed from the Criminal Court of Record for Volusia County; disposition, affirmed. 55 Fla. 7.

John Collier vs. The State of Florida, January term 1908; offense, entering without breaking; appealed from the Criminal Court of Record for Volusia County; dispotion, affirmed. 55 Fla. 11.

Drew Feagle vs. The State of Florida, January term 1908; offense, assault with intent to murder; appealed from the Circuit Court for Columbia County; disposition, reversed. 55 Fla. 13.

Israel Fisher vs. The State of Florida, January term 1908; offense, violation of local option law; appealed from the Circuit Court for Leon County; disposition, affirmed. 55 Fla. 17.

Josephine Gardner vs. The State of Florida, January term 1908; offense, manslaughter; appealed from the Circuit Court for Walton County; disposition, reversed. 55 Fla. 25.

Alex Henderson vs. The State of Florida, January term 1908; offense, larceny; appealed from the Criminal Court of Record for Duval County; disposition, affirmed. 55 Fla. 36.

Ross Johnson vs. The State of Florida, January term 1908; offense, murder in the third degree; appealed from the Circuit Court for Columbia County; disposition, affirmed. 55 Fla. 41.

Vance Johnson vs. the State of Florida, January term 1908; offense, murder in the first degree; appealed from the Circuit Court for Putnam County; disposition, reversed. 55 Fla. 46.

Jack Kelly vs. The State of Florida, January term Circuit1908; offense, murder in the first degree; appealed from the Circuit Court for Holmes County; disposition, affirmed. 55 Fla. 51.

Andrew Lewis vs. The State of Florida, January term 1908; offense, larceny; appealed from the Circuit Court for Walton County; disposition, affirmed. 55 Fla. 54.

D. A. Minor vs. The State of Florida, January term 190;8 offense, feloniously receiving stolen cigars; appealed from the Criminal Court of Record for Duval County; disposition, affirmed. 55 Fla. 71.

D. A. Minor vs. The State of Florida, January term 1908; offense, larceny; appealed from the Criminal Court of Record for Duval County; disposition, affirmed. 55 Fla. 77.

D. A. Minor vs. The State of Florida, January term 1908; offense, larceny; appealed from the Criminal Court of Record for Duval County; disposition, reversed. 55 Fla. 90.

I. W. Montgomery vs. The State of Florida, January term 1908; offense, embezzlement; appealed from the Criminal Court of Record for Duval County; disposition, reversed. 55 Fla. 97.

Bart McCall vs. The State of Florida, January term 1908; offense, murder in the third degree; appealed from the Circuit Court for Suwannee County; disposition, affirmed. 55 Fla. 108.

Lewis McCaskill vs. The State of Florida, January term 1908; offense, adultery and fornication; appealed from the Circuit Court for Walton County; disposition, affirmed. 55 Fla. 117.

Charles McDuffee vs. The State of Florida, January term 1908; offense, robbery; appealed from the Criminal Court of Record for Escambia County; disposition, affirmed. 55 Fla. 125.

John McDonald, George Cooper, Simon Sykes and Tom Jackson vs. The State of Florida, January term 1908; offense, McDonald murder in the first degree and Cooper, Sykes and Jackson, murder in the second degree; appealed from the Circuit Court for Taylor County; disposition, affirmed. 55 Fla. 134.

Lilly Neal vs. The State of Florida, January term 1908; offense, larceny; appealed from the Circuit Court for Marion County; disposition, affirmed. 55 Fla. 140.

Fred O'Brien vs. The State of Florida, January term 1908; offense, grand larceny; appealed from the Criminal Court of Record for Dade County; disposition, affirmed. 55 Fla. 146.

Abraham Pugh vs. The State of Florida, January term 1908; offense murder in the first degree; appealed from the Circuit Court for Walon County; disposition, affirmed. 55 Fla. 150.

Charles A. Ragland, alias Fisher, vs The State of Florida, Janary term 1908; offense, violation of local option law; appealed from the Circuit Court for Polk County; disposition, affirmed. 55 Fla. 157.

Ora M. Shear vs. The State of Florida, January term 1908; offense, embezzlement; appealed from the Criminal Court of Record for Duval County; disposition, affirmed. 55 Fla. 164.

James N. Strobhar vs. The State of Florida, January term 1908; offense, embezzlement; appealed from the Circuit Court for Alachua County; disposition, affirmed. 55 Fla. 167.fl

George Saurez vs. The State of Florida, January term 1908; offense, maintaining a gaming room; appealed from

the Criminal Court of Record for Escambia County; disposition, affirmed. 55 Fla. 187.

Ben Thompson vs. The State of Florida, January term 1908; offense, arson; appealed from the Criminal Court of Record for Escambia County; disposition, affirmed. 55 Fla. 189.

John Washington vs. The State of Florida, January term 1908; offense, assault with intent to kill; appealed from the Circuit Court for Leon County; disposition, reversed. 55 Fla. 194.

Charles H. West vs. The State of Florida, January term 1908; offense, manslaughter; appealed from the Circuit Court for Sumter County; disposition, reversed. 55 Fla. 200.

Buck Clinton vs. The State of Florida, June term 1908; offense, arson; appealed from the Circuit Court for Orange County; disposition, reversed. 56 Fla. ——.

J. D. Frink vs. The State of Florida, June term 1908; offense, grand embezzlement; appealed from the Criminal Court of Record for Hillsborough County; disposition, reversed. 56 Fla. ——.

Willis Pope vs. The State of Florida, June term 1908; offense, assault with intent to murder; appealed from the Circuit Court for Levy County; disposition, affirmed. 56 Fla. ——.

George Ladson vs. The State of Florida, June term 1908; offense, unlawfully selling liquors; appealed from the Circuit Court for Hernando County; disposition, affirmed. 56 Fla. ——.

January Adams vs. The State of Florida, June term 1908; offense, murder in the second degree; appealed from the Circuit Court for Hernando County; disposition, affirmed. 56 Fla. ——.

James Mitcheon vs. The State of Florida, June term 1908; offense, manslaughter; appealed from the Circuit

Court for Walton County; disposition, reversed. 56 Fla. ——.

Angus C. McDonald vs. The State of Florida, June term 1908; offense, grand larceny; appealed from the Circuit Court for Walton County; disposition, affirmed. 56 Fla. —

Miley G. Barnhill vs. The State of Florida, June term 1908; offense, murder in the first degree; appealed from the Circuit Court for Wakulla County; disposition, affirmed. 56 Fla. ——.

J. A. Putnal vs. The State of Florida, June term 1908; offense, unlawfully selling of liquors; appealed from the Circuit Court for Taylor County; disposition, affirmed. 56 Fla. ——.

Prompt Thompson vs. The State of Florida, June term 1908; offense, violating contract; appealed from the Circuit Court for Taylor County; disposition, reversed. 56 Fla. ——.

William Bellamy vs. The State of Florida, June term 1908; offense, manslaughter; appealed from the Circuit Court for Jackson County; disposition, affirmed. 56 Fla. ——.

William Telfair vs. The State of Florida, June term 1908; offense, uttering a forged receipt; appealed from the Circuit Court for Jackson County; disposition, reversed. 56 Fla. ——.

CRIMINAL CASES DISMISSED ON MOTION OF THE ATTORNEY GENERAL.

Williard Moore vs. The State of Florida; writ of error to Circuit Court, Alachua County; dismissed January 21st, 1908. 55 Fla. 863.

Ed Butler vs. The State of Florida; writ of error to the Criminal Court of Record, Escambia County; dismissed January 28th, 1908. 55 Fla. 863.

William C. Rawlinson vs. The State of Florida; writ of error to the Circuit Court, St. Lucie County; dismissed March 24th, 1908. 55 Fla. 864.

Jack Kelly vs. The State of Florida; writ of error to the Circuit Court, Escambia County; dismissed October 15th, 1907. 54 Fla. 678.

John Johnson vs. The State of Florida; writ of error to the Circuit Court, Jackson County; dismissed October 22nd, 1907. 54 Fla. 678.

John H. Glesson vs. The State of Florida; writ of error to the Circuit Court, Jackson County; dismissed October 22nd,1907. 54 Fla. 679.

John Johnson vs. The State of Florida; writ of error to the Criminal Court of Record, Duval County; dismissed October 29th, 1907. 54 Fla. 679.

James Steele vs. The State of Florida; writ of error to the Criminal Court of Record, Duval County; dismissed October 29th, 1907. 54 Fla. 681.

S. D. Wanton vs. The State of Florida; writ of error to the Criminal Court of Record, Duval County; dismissed December 3rd, 1907. 54 Fla. 682.

C. F. Sallas vs. The State of Florida; writ of error to the Criminal Court of Record, Duval County; dismissed January 13th, 1908. 54 Fla. 682.

Ed Johnson vs. The State of Florida; writ of error to the Criminal Court of Record, Escambia County; dismissed January 22nd, 1907. 53 Fla. 1103.

Albert Johnson vs. The State of Florida; writ of error to Circuit Court, Clay County; dismissed January 22nd, 1907. 53 Fla. 1104.

Bud Hoover vs. The State of Florida; writ of error to the Criminal Court of Record, Duval County; dismissed January 22nd, 1908. 53 Fla. 1104.

Charles Johnson vs. The State of Florida; writ of error to the Criminal Court of Record, Duval County; dismissed February 12th, 1907. 53 Fla. 1106.

Mammie Watkins vs. The State of Florida; writ of error to the Circuit Court, Suwannee County; dismissed June 4, 1907. 53 Fla. 1109.

Jesse Albriton vs. The State of Florida; writ of error to the Circuit Court, Taylor County; dismissed April 23rd, 1907. 53 Fla. 1112.

William M. Mears vs. The State of Florida; writ of error to the Circuit Court, Dade County; dismissed June 23rd, 1908.

Robert Lore vs. The State of Florida; writ of error to the Circuit Court, De Soto County; dismissed October 6th, 1908.

James T. Osborne vs. The State of Florida; writ of error to the Circuit Court, Dade County; dismissed July 7th, 1908.

Robert Broome vs, The State of Florida; writ of error to the Circuit Court, Alachua County; dismissed October 6th, 1908.

HABEAS CORPUS CASES.

L. C. Tanner vs. John R. Wiggins, sheriff; June term 1907; appealed from the Circuit Court for Polk County; disposition, petition denied. 54 Fla. 203.

Ex Parte George C. Scudamore, January term 1908; case of original jurisdiction; disposition, petition denied. 55 Fla. 211.

S. Belch vs. Francis Manning, January term 1908; writ of *habeas corpus* obtained from Circuit Court for Jackson County and plaintiff in error brought case to Supreme Court on writ of error; disposition, motion to dismiss writ of error denied. 55 Fla. 229.

S. Belch vs. Emma Manning, January term 1908; appealed from Circuit Court for Jackson County; disposition, affirmed. 55 Fla. 233.

Ben Terrell vs. J. R. Wiggins, sheriff, and Wiggins & Wiggins; January term 1908; appealed from the Circuit Court for Polk County; disposition, affirmed. 55 Fla. 596.

Barney Thomas vs. F. D. Saunders; June term 1908; appealed from the Circuit Court for Escambia County; disposition, affirmed. 56 Fla. ——.

F. B. Hardee vs. R. E. Brown, June term 1908; appealed from the Circuit Court for Dade County; disposition, reversed. 56 Fla. ——.

OFFICIAL OPINIONS.

CONTRACT OF COMMON CARRIER.

Tallahassee, Fla., January 12, 1907.

Hon. R. C. Dunn,
Secretary Railroad Commissioners,
Tallahassee, Florida.

Dear Sir:

Your letter of the 11th enclosing proposed contract between Southern States Lumber Company and Messrs. Phillips and Earnest has been received. I note that the Commissioners request my opinion upon the "Facts set forth in the proposed contract" as to whether such facts constitute an admission "by the railroad" that it is a "common carrier," and therefore subject to the provisions of Chapter 4700.

If the Southern States Lumber Company should upon occasion deny that it is doing the business of a common carrier within the meaning of Chapter 4700, Laws of Florida, I think the proposed contract, should it be received in evidence, would tend to establish its contentions, though I do not pretend to assert what the exact probative force of such evidence would be. My opinion on this point cannot for any reason be substituted for the Commissioners' judgment.

I will call your attention to the language of the proposed contract wherein it distinctly asserts that the Southern States Lumber Company is not a common carrier and not authorized by its charter to be such, and does not desire to undertake the obligations of a common carrier. The proposed contract seems to be one where a private carrier undertakes as a matter of accommodation to another to transport freight for such other person along its line of road.

I know of no rule or regulation prescribed by the Railroad Commissioners applicable to the Southern States Lumber Company with which the proposed contract would be in conflict.

As to the binding force of such a contract made between Phillips and Earnest and a private corporation I beg to say, that while I do not regard such question as one which the Railroad Commissioners are required to determine, I will in answer to the question say that in my judgment it would be valid.

I herewith return the proposed contract and written memorandum attached.

Yours very truly,
W. H. ELLIS,
Attorney General.

AUTHORITY TO USE CERTAIN CORPORATE NAME OF RAILROAD.

Tallahassee, Fla., January 12, 1907.

Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of the 9th asking if it would be proper for you to authorize a railroad company to use the name of the Florida Southern Railroad Company.

The files of your office show that a corporation by the name of the Florida Southern Railroad Company was organized in this State and letters patent were issued in April, 1892.

Section 2676 of the General Statutes provides that no two corporations shall bear the same corporate name. Now if the corporation known as the Florida Southern Railroad Company is still in existence, that is to say: if it has not been dissolved by a conveyance of its properties to another corporation, it would be clearly wrong to issue letters patent to another corporation by the same name.

I am inclined to the opinion, with what information I have on the subject, that there has been a dissolution of the old Florida Southern Railroad Company, by reason of the

acquisition by the Atlantic Coast Line Railroad Company of its properties and franchises; if such is the case, there would be no impropriety in issuing letters patent to another corporation of the same name.

Yours very truly,
W. H. ELLIS,
Attorney General.

CLAIMS FOR LOST BAGGAGE.

Tallahassee, Fla, January 12, 1907.

Hon. R. C. Dunn,
Secretary Railroad Commissioners,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of the 9th instant saying that the Railroad Commissioners requested that I advise them whether or not they have the power to "compel transportation companies to pay claims for lost or damaged baggage." In reply I beg to say, that the Commissioners have no such power.

I hereby return letter of Mr. J. H. Patterson, dated December 14th, 1906, bill of Mrs. A. Chaires against the S. A. L. Railway Company for $30.00, and Seaboard Air Line Railway duplicate check No. M606019.

Yours very truly,
W. H. ELLIS,
Attorney General.

PAYMENT OF EXPENSES FOR COLLECTION OF DRAINAGE TAX.

Tallahassee, Fla., January 14, 1907.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.

Dear Sir:

I am in receipt of your letter of recent date asking if

in my opinion bills accruing from the enforcement of the provisions of Chapter 5377 of the Acts of 1905, where suits were brought to restrain the collection of the tax levied by virtue of the statute, may be paid from the appropriation for "expenses of collection of revenue," and if all and each and every expense attendant upon the levy and collection of this tax should be paid from the appropriation above named. You also request me to advise you if the vouchers for such payment should have the approval of the Board of Drainage Commissioners, and whether by the signature and attestation of the chairman or by the signature of each individual member of the board.

Chapter 5377 of the Laws of 1905 is an Act relating to the drainage and reclamation of the swamp and overflowed lands in Florida. It creates a Board of Drainage Commissioners, vests it with certain powers and prescribes certain duties. Among other things it directs the Board of Drainage Commissioners to lay out drainage districts in the State of Florida, and to levy on the alluvial or swamp and overflowed taxable lands within such drainage districts, a tax not exceeding ten cents per acre per annum, to be fixed annually by the Board of Drainage Commissioners.

The Act provides that the amount so levied "shall be collected by the various tax collectors of the counties wherein such levies have been made as other taxes are collected in accordance with law."

That the fund provided for by that Act is a public fund and created for a public purpose is in my judgment unquestionable. It has been held by the courts, that the Legislature has the power to compel local improvements which in its judgment will promote the health of the people and advance the public good. The reclamation of vast bodies of swamp and overflowed lands, such as exist in this State, is generally regarded as a public improvement of great magnitude and of the utmost importance to the country. Several States have treated the reclamation of swamp and overflowed lands as a public question and have enacted laws providing for the raising of revenue for that purpose. Chapter 5377 is a general act of the Legislature

providing for the raising of a fund to be expended in the work of draining the swamp and overflowed lands of this State, and I therefore think that the money collected under this Act constitutes a public fund within the meaning of the constitutional provision, which required the Treasurer to receive and keep all funds, bonds and other securities, etc. Section 24 of Article IV of the Constitution.

The fund intended to be raised by the Chapter to which reference is above made is raised by the exercise of the taxing power of the State, and the fund so created is intended to be devoted to the accomplishment of a certain work which is of a general and public utility. I, therefore, regard the expense incident to the collection of the tax as a proper charge against the appropriation for the expenses of collecting revenue.

As to the matter of auditing and approving the bills which may be rendered for the expense incurred in collecting the tax provided for by the above named act, I think that the statutes make it the duty of the State to examine, audit and settle all such accounts, claims and demands against the State.

I think that the Board of Drainage Commissioners have no power, nor does the act seek to make it the duty of the board to audit and approve the bills which may be rendered for expenses incurred in the collection of the aforementioned tax, further than the expense incident to the preparation of the lists of the alluvial or swamp and overflowed taxable lands which may lie within the drainage districts which may be established.

Yours very truly,

W. H. ELLIS,

Attorney General.

REPAIR OF BAD ORDERED CAR.

Tallahassee, Florida, January 16, 1907.

Mr. R. C. Dunn,
Secretary Railroad Commissioners,
Tallahassee, Florida.

Dear Sir:

Your letter of the 8th in relation to the complaint of Messrs. Stringfellow and Doty against the Florida East Coast Railway and the Atlantic Coast Line Railroad has been received.

You request me to advise the Railroad Commissioners whether or not under the Railroad Commission Law the Atlantic Coast Line Railroad "can be compelled to repair bad order car in case of this kind." I beg to refer the Railroad Commissioners to my letter of October 19th, 1905, in relation to a shipment of cross-ties by Mr. S. P. Vickers over the Atlantic Coast Line Railroad from a point on its line to Live Oak, Florida. That letter fully answers the question involved in the complaint of Messrs. Stringfellow and Doty.

Yours very truly,
W. H. ELLIS,
Attorney General.

DEMURRAGE RULE.

Tallahassee, Florida, Jan. 17, 1907.

The Hon. Railroad Commissioners,
Tallahassee, Florida.

Gentlemen:

Your letters of recent date enclosing papers in the case of Ganahl & Saussy for $8.00 against the Atlantic Coast Line Railroad Company for demurrage on cars, A. C. L. No. 17564 and C. N. O. No. 3407, claim No. 1877; also claim of the Jacksonville Grocery Company against the Atlantic Coast Line Railroad Company for $4.00 on account of demurrage on L. & N. car No. 3883, claim No. 1841, has been received.

I have decided that it would be just as well for the Railroad Commissioners to cite the Atlantic Coast Line Railroad Company to appear before them upon a rule to show cause why the railroad company has violated demurrage rule No. 11, and if the company fails to show a reason for such violation of the rule, or attempts to justify on the grounds that the shipments were inter-state commerce and were not bound by the rule, the validity of the rule could be tested on a suit to collect whatever fine may be imposed.

I herewith return the papers in both cases.

Yours very truly,

W. H. ELLIS,

Attorney General.

FURNISHING OF CARS FOR INTER-STATE TRAFFIC.

Tallahassee, Fla., Jan. 17, 1907.

The Hon. Railroad Commissioners,
Tallahassee, Florida.

Gentlemen:

The communication from your Secretary of recent date in relation to the complaint of the Edgar Plastic Kaolin Company of Edgar, Florida, has been received.

You request my opinion upon the question of whether the Commissioners of the State have the power to compel the furnishing of cars for the movement of inter-state traffic.

The communication of the Edgar Plastic Kaolin Company to the Railroad Commissioners recites that they are engaged in the mining and preparing of kaolin for market, and that their business from that place is all interstate. The company refers to Rule 15, recently adopted by the Railroad Commissioners, and asks if they are entitled to the $2.00 per day demurrage for the non-delivery of cars to be loaded under that rule.

The rule referred to by the Edgar Plastic Kaolin Company, I think, is one which does not apply to interstate shipments. I think that the case of Houston & T. C. R. Co. vs. Mayers, 210 U. S. 321, is decisive of this point.

Yours very truly,

W. H. ELLIS,

Attorney General.

PROCEEDS OF FIRE INSURANCE ON DESTROYED DORMITORY OF FEMALE COLLEGE.

Tallahassee, Fla., Feb. 11th, 1908.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.

Dear Sir:

I am in receipt of your letter of the 4th enclosing a letter from Hon. N. P. Bryan, Chairman of the Board of Control, in which Mr. Bryan asks of you, whether you will approve vouchers and issue warrants on the State Treasurer drawn against the proceeds of the fire insurance policies on the building used as a dormitory by the Florida Female College, and which was destroyed on December 23rd, 1906, in the event the said proceeds are deposited with the State Treasurer.

You request my opinion upon the proposition involved in Mr. Bryan's question. As I understand the question propounded by Mr. Bryan it is simply: Are the proceeds of the sale of any property the title to which is vested absolutely in the State Board of Education in fee simple absolute, in trust for the uses and purposes of Chapter 5384 of the laws of 1905 under the provisions of that act, available for use by the Board of Control and the State Board of Education to carry out the purposes of the act above mentioned.

The building used as a dormitory and which was destroyed by fire as above stated, was a part of the property which belonged to the West Florida Seminary, and under

the provisions of Section 2 of Chapter 5384, Laws of 1905, vested absolutely in the State Board of Education in fee simple absolute, in trust nevertheless for the uses and purposes of that act.

It was the purpose of the Legislature that the system of schools provided for by that act should receive the benefits derived from the use of that property. If the Board of Control and the State Board of Education had found it necessary to dispose of the property by sale, there would be no question but that the proceeds of such sale could be utilized by the Board of Control and the State Board of Education to carry out the purposes of the act.

The property at Kissimmee, Gainesville, De Funiak Springs and Bartow, which vested in the State Board of Education under the provisions of that act, was sold as follows: The property at Kissimmee for $998.50, that at Gainesville for $30,000, that at De Funiak Springs for $3,400 and that at Bartow for $2,610.50, and the money realized from the sale of the property was passed to the credit of the State Board of Education to be held in trust for the uses and purposes of the act; and such money has been from time to time used by the Board of Control and State Board of Education to carry out the purposes of the act. Likewise other moneys which have come to the State Board of Education from the rental of property which vested in the State Board of Education under the provisions of that act have been utilized by the Board of Control and State Board of Education for the purposes of the act, and at one time when fire destroyed a small building at the Colored Normal School, the money realized from the insurance company was carried to the credit of the State Board of Education and used by the Board of Control and the State Board of Education to carry out the provisions of the act.

I see no reason why the money realized from the insurance company upon the policies which were in force upon the building used as a dormitory by the Florida Female College could not be used by the Board of Control and the State Board of Education under the provisions of the act

mentioned, and in accordance with the custom which has heretofore prevailed in that regard.

I herewith return the letter of Hon. N. P. Bryan.

Yours very truly,
W. H. ELLIS,
Attorney General.

APPROPRIATION FOR SOLDIERS HOME A SPECIAL ACT.

February 11, 1907.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.

Dear Sir:

In reply to your oral request of an opinion upon the subject of a letter written by Hon. F. P. Fleming, to yourself, dated January 17, 1907, I have the honor to say that in my judgment the opinion of Mr. Fleming is correct. I agree with him that Chapter 5276 of the Acts of 1903 was a special and not a general statute, and was therefore not repealed by Chapter 5372.

I herewith return the letter of Governor Fleming.

Yours very truly,
W. H. ELLIS,
Attorney General.

TAX ON TURPENTINE PRIVILEGES.

Tallahassee, Florida, Feb. 11, 1907.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of the 1st enclosing a letter from Mr. Cheshire, Tax Collector of Hamilton

County, in regard to the question of taxes on turpentine leases.

In a communication dated July 6, 1906, upon this subject I advised you that the taxes upon turpentine and timber privileges should be collected just as if said interest in the land was land itself. If the collector will proceed to advertise just as he advertises land for taxes he will proceed in accordance with law as I understand it.

I return herewith letter of Mr. Cheshire.

Yours very truly,
W. H. ELLIS,
Attorney General.

ELIGIBILITY OF SUPERVISOR OF REGISTRATION FOR OFFICE.

Tallahassee, Fla., Feb. 16, 1907.

Hon. N. B. Broward,
Governor,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your communication of the 16th requesting my opinion upon "force and effect of the last clause of Section 179 of the General Statutes of Florida, which reads as follows: 'The Supervisor of Registration shall not be eligible for any other office until six months after ceasing to be such Supervisor.'"

I think the word "eligible" as used in the Statute means legally qualified. I think it is within the power of the Legislature to place such restrictions upon the holding of office, as is placed by the section of the General Statutes to which you referred in your communication of above date. The purpose of the Legislature was manifest, and the effect of the clause is to prohibit any one who has been a Supervisor of Registration from holding any other office until six months after he ceases to be such Supervisor.

Yours very truly,
W. H. ELLIS,
Attorney General.

PAPERS IN CASE OF MERCER-MULLER CO. VS. A. C. L. R. CO.

Tallahassee, Fla., Feb. 27, 1907.

Hon. R. Hudson Burr,
Chairman Railroad Commissioners,
Tallahassee, Florida.

Dear Sir:

I am in receipt of your communication from the Secretary of the Railroad Commissioners enclosing papers in the case of Mercer-Muller Company against the Atlantic Coast Line Railroad Company, and requesting me to institute suit against the railroad company to compel the payment of the fine of one thousand dollars ($1,000.00) imposed by the Railroad Commissioners in that case.

I respectfully call your attention to the fact that the documents transmitted to this office do not contain a copy of the entry in the minute book of the Commissioners of the order fixing and imposing the fine against the railroad company, certified to by the Chairman of the Railroad Commissioners. As such certified copy of the entry in the minute book constitutes the prima facie evidence of the fact that such fine or penalty was fixed by the Commissioners, I would like to be in possession of it before the suit is instituted.

Yours truly,
W. H. ELLIS,
Attorney General.

PAPERS IN CASE OF MERCER-MULLER CO. VS. A. C. L. R. CO.

Tallahassee, Fla., Feb. 27, 1907.

Hon. R. Hudson Burr,
Chairman Railroad Commissioners,
Tallahassee, Florida.

Dear Sir:

I am in receipt of a communication from the Secretary of the Railroad Commissioners enclosing papers in the

case of Mercer-Muller Company against the Atlantic Coast Line Railroad Company, and requesting me to institute suit against the railroad company to compel the payment of the fine of four thousand dollars ($4,000.00) imposed by the Railroad Commissioners in that case.

I respectfully call your attention to the fact that the documents transmitted to this office do not contain a copy of the entry in the minute book of the Commissioners of the order fixing and imposing the fine against the railroad company, certified to by the Chairman of the Railroad Commissioners. As such certified copy of the entry in the minute book constitutes the prima facie evidence of the fact that such fine or penalty was fixed by the Commissioners, I would like to be in possession of it before the suit is instituted.

Yours very truly,
W. H. ELLIS,
Attorney General.

PAPERS IN CASE OF SOUTHERN PINE LUMBER CO. VS. S. A. L. RY. CO.

Tallahassee, Fla., Feb. 27, 1907.

Hon. R. Hudson Burr,
Chairman Railroad Commissioners,
Tallahassee, Florida.

Dear Sir:

I am in receipt of a communication from the Secretary of the Railroad Commissioners enclosing papers in the case of the Southern Pine Lumber Company against the Seaboard Air Line Railway Company, and requesting me to institute suit against the railroad company to compel the payment of the fine of two thousand dollars ($2,000.00) imposed by the Railroad Commissioners in that case.

I respectfully call your attention to the fact that the documents transmitted to this office do not contain a copy of the entry in the minute book of the Commissioners of the order fixing and imposing the fine against the railroad

company, certified to by the Chairman of the Railroad Commissioners. As such certified copy of the entry in the minute book constitutes the prima facie evidence of the fact that such fine or penalty was fixed by the Commissioners, I would like to be in possession of it before the suit is instituted.

Yours truly,

W. H. ELLIS,

Attorney General.

PAPERS IN CASE OF PAUL & WAYMER LUMBER CO. VS. A. C. L. R. CO.

Tallahassee, Fla., Feb. 27, 1907.

Hon. R. Hudson Burr,

Chairman Railroad Commissioners,

Tallahassee, Florida.

Dear Sir:

I am in receipt of a communication from the Secretary of the Railroad Commissioners enclosing papers in the case of Paul & Waymer Lumber Company vs. Atlantic Coast Line Railroad Company, and requesting me to institute suit against the railroad company to compel the payment of the fine of one thousand dollars ($1,000.00) imposed by the Railroad Commissioners in that case.

I respectfully call your attention to the fact that the documents transmitted to this office do not contain a copy of the entry in the minute book of the Commissioners, of the order fixing and imposing the fine against the railroad company, certified to by the Chairman of the Railroad Commissioners. As such certified copy of the entry in the minute book constitutes the prima facie evidence of the fact that such fine or penalty was fixed by the Commissioners, I should like to be in possession of it before the suit is instituted.

Yours very truly,

W. H. ELLIS,

Attorney General.

OFFICE OF COUNTY SURVEYOR.

Tallahassee, Florida, March 7th, 1908.

Hon. N. B. Broward,
Governor,
Tallahassee, Fla.

Dear Sir:

I am in receipt of yours of the 2nd asking for my opinion upon the facts stated in a letter from Mr. J. Ed Raulerson to you dated February 23rd, 1907.

Mr. Raulerson states that Mr. Clark, the County Surveyor, has been unable for some time to discharge his duty as County Surveyor; that he has appointed a deputy and he himself has left the county for an "indefinite period."

Section 298 of the General Statutes enumerates the circumstances under which an office may be deemed vacant. The fourth clause is the only one that could apply to the facts in this case. That clause provides that the office may be deemed vacant by the incumbent ceasing to be an inhabitant of the State, district, county, town or city for which he shall have been elected or appointed. It can not be said that Mr. Clark has ceased to be an inhabitant of the State or of the County of DeSoto. It takes something more than absence from the county to deprive one of citizenship of such county. As for his absence being for an indefinite period, it is sufficient to say that that alone does not deprive Mr. Clark of his citizenship in DeSoto county.

Under Section 989 of the General Statutes a County Surveyor has the authority to appoint deputies.

I herewith return the letter of Mr. Raulerson.

Yours very truly,
W. H. ELLIS,
Attorney General.

DEMURRAGE CLAIM.

Tallahassee, Fla., March 11, 1908.

Mr. R. C. Dunn,
Secretary Railroad Commissioners,
Tallahassee, Florida.

Dear Sir:

In compliance with your verbal request of this date, I beg to herewith return your file in the matter of the claim of C. W. Zarring & Company, of Jacksonville, Florida, demurrage, Claim No. 1803.

Yours very truly,
W. H. ELLIS,
Attorney General.

WIDOWS' EXEMPTION FROM TAXATION.

Tallahassee, Fla., March 23, 1908.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter enclosing letter from Hon. G. W. Hinsey of Apalachicola, Florida.

Section 431 of the General Statutes provides that there shall be exempt from taxes property to the value of two hundred dollars to every widow dependent upon her own exertions, and to every person who has lost a limb or been disabled in war or by misfortune to that extent that it disqualifies him for manual labor.

Section 510 requires the Assessor to ascertain by diligent inquiry the names of all taxable persons in his county, and also all their taxable personal property and all taxable real estate therein on the first day of January of such year, and shall make out an assessment roll of such taxable property.

The lien for taxes upon the property taxed relates back to the first day of January. It can not be said of a widow, whose husband died after the first day of January and

whose property was assessed for taxation, that it was her property on the first day of January which was taxed, and that such property was exempt from taxation. Therefore I think she is not entitled to claim the deduction from the amount of taxes due upon the particular property which was assessed against her husband.

The statute exempts the property from taxation when it is owned by a widow who is dependent upon her own exertions. If the property was assessed to a widow on the first day of January and such widow was dependent upon her own exertions, the assessment was invalid and no lien attached therein. If she parted with it, therefore, after the first day of January, I think the exemption holds good in the hands of the person to whom it was transferred.

I herewith return the letter of Mr. Hinsey.

Yours very truly,

W. H. ELLIS,

Attorney General.

LICENSE TAX ON REAL ESTATE AGENTS.

Tallahassee, Fla., March 23, 1907.

Hon. H. A. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter enclosing a letter from Hendry & Knight Company in regard to the payment of a license tax for the sale of real estate.

Section 442 of the General Statutes makes it the duty of all persons engaging in, managing and transacting the business of selling or offering to sell real estate on commission to pay a license tax of $10.00. I note in the letter of Hendry & Knight Company it is stated that it is the business of their employees to make sale of a lot when it is possible for them to do so, but that he receives no commission on said sale, but is paid a stipulated salary. I

think that such employees would therefore be exempt from the payment of the license tax as real estate agents.

I am inclined to think that each member of a firm or corporation who actually engages in managing or transacting a real estate business should be required to pay the license. As such has been the ruling of your department I see no reason why there should be any change.

I herewith return the letter of Hendry & Knight.

Yours very truly,

W. H. ELLIS,

Atttorney General.

CLAIM AGAINST RAILROAD FOR FURNISHING WRONG CARS.

Tallahassee, Fla., April 8, 1907.

Hon. Railroad Commissioners,
Tallahassee, Florida.

Gentlemen:

I am in receipt of a communication from Mr. R. C. Dunn, Secretary, under date of March 26th, enclosing specifications of yellow pine lumber shipped by the Robert Sizer Company, and various bills of the Robert Sizer Company to the Nassau Forwarding Company, aggregating $34.17, for "extra handling," which bills show that the lumber was loaded in gondola cars and box cars; also a letter from Robert Sizer Company to R. C. Dunn, Secretary, in which it is claimed by Mr. Sizer that from the car reports it appears that the lumber should have been loaded on flat cars; that in some instances the lengths were so long and the sizes so large that it was with a great deal of difficulty that they were able to get the lumber out of the end windows.

The Sizer Company requests the Commissioners to have the amount of the claims refunded.

You ask for my opinion upon the question as to whether the Railroad Commissioners have the power to compel the payment of this claim.

The files before me do not show that demand was made by the Sizer Company upon the the railroad transporting this lumber for flat cars, nor is there any statement from the Commissioners that any rule prescribed by the Railroad Commissioners was violated by the company transporting the lumber in box cars or gondola cars. I am advised, therefore, of no rule prescribed by the Railroad Commissioners which has been violated by the transportation company in this case.

Section 13 of Chapter 4700 provides that it shall be the duty of the Railroad Commissioners when requested so to do by any person who might be injured by any railroad company guilty of any violation or disregard of any rule, rate or regulation prescribed by the Commissioners, to institute proceedings to compel restitution and enforce the penalty incurred in any court having jurisdiction.

As the facts submitted to me do not show that the railroad company has inflicted injury or wrong upon the Sizer Company, in the violation or disregard of any rule prescribed by the Railroad Commissioners, I am of the opinion that the Commissioners have not the power to compel the payment of this claim.

I herewith return the documents above mentioned.

Yours very truly,

W. H. ELLIS,

Attorney General.

BILL OF CAPITAL PUBLISHING COMPANY.

Tallahassee, Fla., April 9, 1907.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.

Dear Sir:

I am in receipt of your communication of the 8th instant enclosing bill of the Capital Publishing Company against the State of Florida for the sum of $417.00 for printing five hundred copies of the "Audit of Financial Transac-

tions of Trustees of Internal Improvement Fund from the beginning of Trust to January 1st, 1907."

You write me that you are "at a loss to know what authority, if any, is vested in you as Comptroller of the State of Florida either to audit or pay this bill." You request me to advise you if the bill can be paid and out of what appropriation or fund.

As to your authority to audit the account, Section 23, Article IV of the Constitution, provides that the Comptroller shall examine, audit, adjust and settle all accounts of official officers of the State and perform such other duties as may be prescribed by law. Section 99 of the General Statutes provides that it shall be the duty of the Comptroller of this State to examine, audit and settle all accounts, claims and demands whatsoever against the State arising under any law, or resolution of the Legislature, and to issue his warrant to the Treasurer directing him to pay out of the State treasury such amount as shall be allowed by said Comptroller thereon.

Under the Constitution, Section 9, Article IV, it is the duty of the Governor to communicate by message to the Legislature, at each regular session, information concerning the condition of the State and recommend such measures as he may deem expedient. Acting under this authority the Governor instructed the State Auditor to examine the books of account records, vouchers, papers, warrants and all other property held by the Trustees of the Internal Improvement Fund in order that the Governor might be informed of the condition of this fund and submit to the Legislature for its consideration the findings of the State Auditor as reported by him after such investigation.

The Governor deemed it proper that a sufficient number of the State Auditor's reports should be distributed among the members of the Legislature to enable each and every member to be fully advised as to the administration by the Trustees of said fund. To this end the Governor ordered the report of the State Auditor to be printed and five hundred copies thereof to be supplied.

I think, therefore, that the account presented by The Capital Publishing Company for the work and expenses

of printing such report is an account arising under the law within the meaning of Section 99 of the General Statutes, and your authority to audit the same is therefore clear.

As the appropriation for contingent expenses of the State is an appropriation made by the Legislature to meet such demands upon the State government as may not be specially provided for by the Legislature, and which may arise from the exercise of the Governor's discretion in the matter of providing for the dissemination of information concerning matters of public interest and other necessary expenses, I think that the account should be paid from the appropriation for contingent expenses of the State.

Yours very truly,
W. H. ELLIS,
Attorney General.

SUB-SCHOOL DISTRICT TAX.

Tallahassee, Fla., April 22, 1907.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

Yours of the 12th instant enclosing a letter from Hon. William R. Colter, Tax Assessor of Levy County, asking if the property owners of sub-school districts created after January 1st are liable for the extra millage for this year, has been received. In reply I beg to say that if the district was created before the first of June, I should think that the property owners would be liable for this year's tax.

Section 410 of the General Statutes provides that it shall be the duty of the trustees, on or before the first day of June, to prepare an itemized estimate showing the amount of money necessary and likely to be raised for the next ensuing scholastic year, and to certify therein the rate of millage voted to be assessed and collected upon the taxable property within the Special Tax School District for that year.

Section 411 makes it the duty of the County Commissioners to order the Assessor to assess and the Collector to collect the amount legally assessed upon the property of the special district.

I herewith return the letter of Mr. Colter.

Yours very truly,

W. H. ELLIS.

Attorney General.

TAX ON TELEPHONE COMPANIES.

Tallahassee, Fla., April 27, 1907.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.

Dear Sir:

In reply to your letter of the 26th inst., enclosing letters from Hon. C. S. Bandy, Tax Collector, and Hon. W. R. Johnston, County Judge of Osceola County, I beg to say that the letters of those gentlemen do not relate to the assessment of telephones or telephone companies, but they inquire as to the license tax that should be paid by the Southern Bell Telephone Company.

Mr. Bandy in his letter of the 22nd says: "Inasmuch as they (meaning the Southern Bell Telephone Company) operate all over the State, would I collect license for the value of their lines in this county?"

Mr. Johnston in his letter of the 23rd referred to the following question which he said had been propounded to you: "What would be the proper amount to tax the Bell Telephone Company for doing business in this county?" He said that you answered that question by referring to the section of the Statutes regarding license taxes imposed upon telephone companies. Mr. Johnston thinks that it is not just to tax the Bell Telephone Company in each county upon its capital stock.

Section 490 of the General Statutes provides that all persons doing the business of furnishing telephones to users thereof, having a capital stock of $250,000 or more,

shall pay a license tax of $150.00, etc. The license tax provided for by this section is a State license. See Section 438 of the General Statutes. I think that under the provisions of the act the State may collect only one license tax from persons engaged in the business of furnishing telephones for each year. Section 439 of the General Statutes provides that counties and incorporated towns and cities may impose such further taxes of the same kind upon the same subjects as they may deem proper, unless otherwise provided in the act when the business or occupation shall be engaged in within such county, city or town.

If the Bell Telephone Company has paid the State tax required by Section 490, the Tax Collector of Osceola County can collect only such taxes from such company as may have been imposed by that county against persons engaged in such business.

I herewith return the letters of Hons. Bandy and Johnston.

Yours truly,

W. H. ELLIS,

Attorney General.

IN RE. CASE OF COLONIAL TRUST CO. VS. F. E. C. RY. CO. & R. R. COMMISSIONERS.

Tallahassee, Fla., April 29, 1907.

Hon. R. Hudson Burr,

Chairman Railroad Commissioners,

Tallahassee, Fla.

Dear Sir:

In re, the case of The Colonial Trust Company of New York vs. The Florida East Coast Railroad Company and the Railroad Commissioners, now pending in the United States Court for the Southern District of Florida; I wish to say that Judge Locke recently made an order granting the temporary injunction asked for by the complainants in that case and has overruled the demurrers to the origi-

nal bill and the cross bill. I am allowed until June 1st to file answers to those bills, so I have been informed, although I have received no official notice from the court to that effect.

The original bill, as you are aware, seeks to enjoin the Railroad Commissioners from enforcing three orders, viz: Order Number ——, dated June 13th, 1906, prescribing a uniform passenger rate of three cents per mile over the lines of the East Coast Railroad in this State; Order Number ——, dated May, 1905, prescribing the rate on lumber transported over the East Coast lines, and Order Number ——, dated April 30th, 1906, providing for the establishment of an agency at Cocoanut Grove.

I presume that the Railroad Commissioners in making these orders made a thorough investigation of the business affairs of the East Coast Railroad as the law contemplates; see Sections 9, 17, 18, Chapter 4700 laws of 1899, and compiled all necessary data upon which the orders were made.

It is necessary for me to have that data complete and in systematic form in order that the same may be presented to the court in the answer to the two bills, as a justification of the action of the Railroad Commissioners in making such orders and in sustaining their legality. The cross bill filed by the East Coast Railroad Company admits practically the allegations of the original bill. I therefore ask that you furnish me at once or as soon as possible all the data that you compiled and which formed the basis of the said orders as well as the names and post-office addresses of all witnesses examined by the Commissioners and their testimony as taken by you.

This information must be given to me as soon as practicable because, as stated, the answers must be filed by the first of June, 1907.

Please examine the following subdivisions of the original bill and furnish me with a detailed statement of the facts as you ascertained and compiled them: Subdivision entitled "Charter Rights of the Company," "Roads merged in and consolidated with," "Completed line of Railway,"

"Mortgages to complainant," "Liabilities of the Florida East Coast Railway Company," "Present value of property," "Capitalization and Dividends," "Expenses, Earnings and Deficit," "Principal Roads of Florida," Passenger and Freight Earnings," "Passenger Earnings," "Mayport Branch," "Receipts and average cost of carrying passengers per mile," "Average receipts on Mayport branch," "Actual loss carrying passengers," "Freight tonnage on different roads," "Increase in freight rates impracticable," "Limitations of freight," "Agencies," "An unreasonable and unjust order," "Business at Cocoanut Grove," "Reduction of Lumber rates," "Reduction of Passenger rates," "Aggregate losses," "Insolvency threatened." Under the above entitled subdivisions in the original bill the complainant has made many allegations of fact which materially bear upon the orders made by the Railroad Commissioners and against the enforcement of which the complainant is seeking an injunction.

I herewith enclose a copy of the original bill as filed by The Colonial Trust Company of New York and a copy of the cross bill as filed by the East Coast Railroad Company in the case above mentioned. Please return both copies to me with the data as requested as early as practicable so that I may prepare the answer.

Yours very truly,
W. H. ELLIS,
Attorney General.

CLAIM OF CHAS. A. WILLIS—DECLARING OF BLOCKADE BY RAILROAD.

Tallahassee, Fla., May 3, 1907.

Hon. R. Hudson Burr,
Chairman Railroad Commission,
Tallahassee, Fla.

Dear Sir:

Your letter of the 18th ult. regarding certain communications which the Railroad Commissioners have received

from Mr. Charles A. Willis of Redbank, N. J., has been received.

You are mistaken in the statement that I was to advise the Railroad Commissioners as to what action they should take in reference to this claim. The pencil memorandum made by me, at the time I received the documents in the case, show that I was to write to Mr. Willis. On the 20th of February I wrote to Mr. Willis, advising him that he had a right, by written demand upon the Commissioners, to require them to force recovery of whatever damages the law authorized in such proceedings; that the amount of the overcharge appeared to be only ten dollars, as the same was estimated by the secretary of the Commissioners in a letter to Mr. Willis dated January 5th. In my letter I suggested to Mr. Willis that there was no necessity for any discussion as to what amount he expected to recover for loss of time or attorney's fees,—that the court would settle that question when the suit was brought.

I herewith return the files in that case.

I am also in receipt of a communication from R. C. Dunn, Secretary of the Railroad Commissioners, regarding the complaint of the Paul & Waymer Lumber Company of Lakeland, Florida, that the Atlantic Coast Line Railroad Company could declare a blockade at a point, as at Tampa, for instance, and decline to transport any further shipments until the blockade is removed.

I am of the opinion that the railroad company can not refuse to transport to any point on its line any commodity offered for transportation, which is proper to be transported.

Yours very truly,

W. H. ELLIS,

Attorney General.

REFUSAL TO PAY LICENSE TAX.

Tallahassee, Fla., May 3, 1907.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

Your letter of the 26th ult., enclosing a letter from Mr. J. S. Roberts, Tax Collector, Escambia County, has been received.

You request me to advise you what proceedings could be best taken in regard to the enforcement of the law against the persons named in Mr. Roberts' letter, who refuse to pay license tax.

Section 502 of the General Statutes, provides that the payent of all license taxes may be enforced by the seizure and sale of property by the Tax Collector, and by that section it is made the special duty of the Tax Collectors and County Judges to report to the Comptroller and the State Attorney any violation of the act.

Section 3447 of the General Statutes provides for the penalty to be imposed upon any person, firm or association, that shall carry on or conduct any business or profession for which a license is required without first obtaining such license.

In the case of a corporation engaged in real estate business, I am of the opinion that not all the stockholders are required to pay the license, but only such persons as are engaged in managing and transacting the occupation.

I herewith return the letter of Mr. J. S. Roberts, as requested by you.

Yours very truly,
W. H. ELLIS,
Attorney General.

DAMAGE WROUGHT BY RAILROAD COMPANY IN REFUSING TO TRANSPORT FREIGHT.

Tallahassee, Fla., May 4, 1907.

Hon. R. C. Dunn,
Secretary Railroad Commission,
Tallahassee, Fla.

Dear Sir:

Your letter of March 15th requesting my opinion as to whether a claimant would have the right to collect damages from a railroad under the Railroad Commission Law, under the stated facts submitted in your letter has been considered by me.

I have made some inquiry to ascertain the nature and character of the shipments referred to in your letter of above date, and from what I have been able to gather, I conclude that the shipments are of an interstate character. It seems that the naval stores leave Jacksonville under consignment to a foreign port and the railroad between Jacksonville and Fernandina in transporting the naval stores merely acts as a connecting carrier; if this is true, the rules and regulations of the Railroad Commission do not apply.

Your letter does not give a full statement of facts which are necessary to be known in order to formulate any opinion on the transaction to which you refer.

If the transaction mentioned in your letter, was an intra-state shipment, then, I think that the railroad company would be required to pay to the shippers applying for the cars, the sum of two dollars per day or fraction of day's delay, after expiration of free time in accordance with Order No. 122 prescribed by the Railroad Commission.

Section 130, Chapter 4700 provides that if any railroad company or other common carrier doing business in the State should, in violation or disregard of any rule or regulation provided by the Commissioners, inflict any wrong or injury on any person, it would be the duty of the Rail-

road Commissioners, if requested by such injured person, to institute proceedings to compel restitution and to enforce the penalty incurred.

From the facts stated in your letter I should say that the injured person, who desired to ship his naval stores from Jacksonville to Fernandina, and who was prevented from so doing by the railroad company by reason of its failure to transport his freight would have a cause of action against such railroad company, and can recover for damages in a proper action against the company.

Yours very truly,
W. H. ELLIS,
Attorney General.

IN RE. CASE OF COLONIAL TRUST COMPANY V. EAST COAST R. R. CO. ET AL.

Tallahassee, Fla., June 11, 1907.

Hon. R. Hudson Burr,
Chairman Railroad Commissioners,
Tallahassee, Fla.

Dear Sir:

On April 29th, 1907, I wrote you in regard to the case of the Colonial Company of New York vs. the East Coast Railroad Company and the Railroad Commissioners now pending in the United States Court for the Southern District of Florida, and advised you that Judge Locke had overruled the demurrers filed by me in behalf of the Railroad Commissioners to the original bill, and the cross bill, and that I was allowed until June 1st to file answers.

In my letter of above date, I had the honor of requesting you to furnish me at once, or as soon as possible, all data compiled by the Commissioners and which formed the basis of the orders against the enforcement of which the complainant in the above named suit sought an injunction. I forwarded to you with my letter, copies of the original bill and cross bill and called your attention to the allegations made by the complainant under certain

subdivisions of the original bill, and requested you to furnish me with a detailed statement of the facts as you ascertained and compiled them.

The information as requested in my letter is necessary to enable me to draft answers to the original and cross bills justifying the action of the Railroad Commissioners in making the orders and in sustaining their legality.

You did not furnish me with the information requested nor have I received from the Railroad Commissioners an acknowledgment of the receipt of my communication, nor were my copies of the original and cross bills returned to me. I was, therefore, unable to prepare the answers of the Railroad Commissioners to the original and cross bills by the rule day in June, and was compelled to ask for an extension of time for the filing of the answers until the rule day in July.

I have the honor to again request you to furnish me with the desired information, so that I may prepare the answers in the above named case in behalf of the Railroad Commissioners.

I would be very glad to have the information requested by the 20th instant, as in that event I would have nine days in which to draft the answers.

Very respectfully,
W. H. ELLIS,
Attorney General.

IN RE CASE OF COLONIAL TRUST CO. V. EAST COAST R. R. ET AL.

Tallahassee, Fla., June 14, 1908.

Hon. R. Hudson Burr,
Chairman Railroad Commissioners,
Tallahassee, Fla.

Dear Sir:

Your favor of the 13th instant acknowledging mine of the 11th which requested from you data that had been

formerly aked for by me, for the defense of the suit of the Colonial Trust Company of New York vs. Florida Railroad Commissioners, et al., received.

You inform me that your body has employed Hon. Louis C. Massey as special counsel under the statute passed at the late session of the Legislature and that he is to be here to-day and your body desires to have a conference with me as to such suit. While I have not intimated to Mr. Massey any desire to have him consult with me on this case and feel that he would not care to have anything to do with the case until I shall have given him an intimation of such desire, I shall be happy to have you turn over to him the conduct of the suit and I take this occasion, as I should, to say that you must not expect me to participate in the prosecution or defense of any future litigation or continue in any now pending that I may decide to be untenable or incapable of being successfully maintained or defended.

The statute mentioned and your action in choosing your own counsel under it removes from your way and precludes all obstacles or embarrassment, heretofore existing or possibly to arise from a difference of opinion between you and me as to law points, affecting your duties, powers and inclinations as to the institution or defense of claims or suits.

I will be pleased, however, to confer with you and Mr. Massey, and you may assure him, as to the suit mentioned and other pending litigation to the end indicated, and will also stand ready to confer with you at any time as to your official functions under my duty as Attorney General.

I have the honor to be,

Very respectfully,

W. H. ELLIS,

Attorney General.

LETTER TRANSFERRING RAILROAD COMMISSION CASES TO SPECIAL COUNSEL OF RAILROAD COMMISSIONERS.

Tallahassee, Fla., June 15, 1907.

Hon. R. Hudson Burr,
Chairaman Railroad Commissioners,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your favor of this date advising me that in view of the fact that the Commissioners had employed Hon. Louis C. Massey as special counsel by the year, under the provisions of the recent act of the Legislature it was deemed best by the Commissioners, that all matters which I now have in charge for the Commissioners be placed in Mr. Massey's hands, and that the special counsel employed to assist me in the several cases. and I be relieved of the responsibility of the future conduct of the same.

In compliance with the desire expressed by you in your letter of above date and at our conference this morning, that I turn over to Mr. Massey "the future handling" of the case of the Colonial Trust Company of New York vs. the Florida Railroad Commissioners and the Florida East Coast Railroad Company as well as other cases which I now have pending for the Railroad Commissioners, I herewith deliver up to Mr. Massey through you the management and control of the cases enumerated below, and accept relief from responsibility for the future conduct thereof.

I also transmit herewith all papers relating to those cases furnished to me by the Commissioners which I have not caused to be filed in the court where the causes are pending.

The Colonial Trust Company,
Vs.
Florida East Coast Railway and the Florida Railroad Commissioners et al.

This is a proceeding to declare unreasonable and unjust certain rules prescribed by the Railroad Commissioners of Florida for passenger fares, an order establishing an agency at Cocoanut Grove and an order prescribing a rate for the transportation of lumber; to enjoin enforcing said rates and orders; to enjoin the prosecution of and infliction of fines on the Florida East Coast Railway Company for the protection of complainant's trust and for injunction and relief. The cause is pending in the Circuit Court of the United States for the Southern District of Florida at Jacksonville. A temporary injunction was granted in this cause on April 20th, 1907, upon the application of complainant. I argued the cause before Judge Locke in behalf of the Commissioners on November 26th and 27th, 1906. I was then, and am now, of the opinion that the complainant failed in its bill to make or state any cause or ground for the relief prayed and that there is no merit in its cause. A cross bill was filed in this case by the Florida East Coast Railway. I interposed demurrers to both the original and cross bills. The demurer to the original bill was overruled and the Commissioners were allowed until rule day in June to answer. As I had not been furnished by the Commissioners with the data upon which the orders and rules sought to be nullified were made, I asked for and obtained an extension of time until the rule day in July next for answering the origial bill. I am in receipt of a message from Mr. Robbins advising me that Judge Locke will hear the arguments upon the demurrers to the cross bill some time during the week beginning June 24th.

I herewith deliver to you the following papers in this case which heretofore constituted my files:

1st. Original and Cross Bills which were transmitted

to you by me on April 29th, 1907, with my request for the date and information to be used in drafting answers.

2nd. Copies of affidavits filed with the original bill supporting bill and application for injunction.

3rd. Copies of exhibits filed with original bill.

4th. Subpoenas returnable January 7, 1907.

6th. Notice of Solicitor for Complainant to defendants and their solicitors of motion for temporary injunction to be called up November 1, 1906, and affidavit of Louis Powell.

7th. Memorandum made by J. L. Morgan.

8th. Papers entitled "Memoranda" and carbon copy of Order No. 65 marked Exhibit "A" to which memoranda and copy of Order No. 65 is attached, Booklet entitled "Rules and Regulations of the Railroad Commissioners of the State of Florida."

9th. List of Flag Stations.

10th. List of stations, agencies and platform stops of Florida East Coast Railway.

11th. Memoranda of receipts, Mayport Branch.

12th. Copy of Injunctional Order dated April 20th, 1907.

13th. Demurrer to Original Bill.

14th. Demurrer to Cross Bill.

The following nine cases were instituted by me to recover fines imposed by the Railroad Commissioners upon the railroad companies named, for a violation of Rule 3 prescribed by the Railroad Commissioners against railroad companies refusing to act as common carriers. In the first four cases, all of which are against the S. A. L. Railroad, the defendant by its attorney, Hon. Geo. P. Raney, interposed demurrers to the declaration. Arguments upon these demurrers were made by Judge Raney for the railroads, and myself for the for the Commissioners at Quincy in March, 1907. The demurrers were overruled and the defendant allowed until April 15th, 1907, in which to plead. These cases are practically ready for trial.

Railroad Commissioners by W. H. Ellis, Attorney General,	*Instituted August* 30, 1907. *No.* 276.
Vs.	*Damages* $600.00
S. A. L. Railway,	*Fine*.....$300.00

Circuit Court Leon County.

1st. Railroad Commission files upon which suit was based—98 sheets.—Complaint of Columbus Lumber Company.

2nd. *Praecipe.*

3rd. Declaration.—Exhibits "A" and "B."

4th. Demurrer and amendment to Demurrer.

5th. Joinder in Demurrer.

6th. Stipulation of counsel to substitute N. A. Blitch for J. B. Brown.

7th. Copy of order overruling Demurrer.

Railroad Commissioners by W. H. Ellis, Attorney General,	*Instituted October* 10, 1907 *No.* 280.
Vs.	*Damages* $600.00
S. A. L. Railway,	*Fine*.....$300.00

Circuit Court Leon County.

1st. Railroad Commission files upon which suit was based—50 sheets.—Complaint of McDowel Crate & Lumber Company.

2nd. Præcipe.

3rd. Declaration—Exhibits "A" and "B."

4th. Demurrer and amended Demurrer.

5th. Joinder in Demurrer.

6th. Stipulation of counsel to substitute N. A. Blitch for J. B. Brown.

7th. Copy of Order overruling Demurrer.

Railroad Commissioners by W. H. Ellis, Attorney General,	*Instituted January* 17, 1907 *No.* 303.
Vs.	*Damages* $1,000.00
S. A. L. Railway,	*Fine*..... 500.00

Circuit Court Leon County.

1st. Railroad Commission files upon which suit was based—86 sheets.—Complaint of Otter Creek Lumber Company.

2nd. Præcipe.

3rd. Declaration—Exhibits "A" and "B."

4th. Copy order overruling Demurrer.

Railroad Commissioners by W. H. Ellis, Attorney General,	*Instituted January* 17, 1907 *No.* 304.
Vs.	*Damages* $1,000.00
S. A. L. Railway,	*Fine*..... 500.00

Circuit Court Leon County.

1st. Railroad Commission files upon which suit was based— 97 sheets.—Complaint of Otter Creek Lumber Company.

2nd. Præcipe.

3rd. Declaration—Exhibits "A" and "B."

4th. Copy order overruling Demurrer.

The demurrers in the last two cases above were the same as in the first two cases. I have no copies among my files.

Railroad Commissioners by W. H. Ellis, Attorney General,	*Instituted April* 16, 1907... *No.* 128.
Vs.	*Damages* $2,000.00
A. C. L. Railroad Company.	*Fine*..... 1,000.00

Circuit Court Gadsden County.

1st. Railroad Commission files upon which suit was based—84 sheets.—Complaint of Paul Waymer Lumber Company.

2nd. Præcipe.

3rd. Declaration—Exhibits "A" and "B."

Railroad Commissioners by W. H. Ellis, Attorney General,	*Instituted April* 16, 1907. *No.* 129.
Vs.	*Damages* $2,000.00
A. C. L. Railroad Company.	*Fine*..... 1,000.00

Circuit Court Gadsden County.

1st. Railroad Commission files upon which suit was based—78 sheets.—Complaint of Mercer-Muller Company.

2nd. Præcipe.

3rd. Declaration—Exhibits "A" and "B."

Railroad Commissioners by W. H. Ellis, Attorney General,	*Instituted April* 16, 1907. *No.* 130.
Vs.	*Damages* $2,000.00
A. C. L. Railroad Company.	*Fine*..... 1,000.00

Circuit Court Gadsden County.

1st. Railroad Commission files upon which suit was based—13 sheets.—Camplaint of S. S. Goffin.

2nd. Præcipe.

3rd. Declaration—Exhibits "A" and "B."

Railroad Commissioners by W. H. Ellis, Attorney General,	*Instituted April* 16, 1907. *No.* 131.
Vs.	*Damages* $8,000.00
A. C. L. Railroad Company.	*Fine*..... 4,000.00

Circuit Court Gadsden County.

1st. Railroad Commission files upon which suit was

based—12 sheets.—Complaint of Mercer-Muller Company.
2nd. Præcipe.
3rd. Declaration—Exhibits "A" and "B."

Railroad Commissioners by W. H. Ellis, Attorney General,	*Instituted April* 16, 1907. *No.* 132.
Vs.	*Damages* $4,000.00
S. A. L. Railway.	*Fine*..... 2,000.00

Circuit Court Leon County.

1st. Railroad Commission files upon which suit was based—31 sheets.—Complaint of Southern Pine Lumber Company.
2nd. Præcipe.
3rd. Declaration—Exhibits "A" and "B."

In none of the of the above cases was special counsel employed.

The cases known as Class "P" cases are as follows:

L. and N. Railroad
Vs.
Railroad Commissioners et al.

S. A. L. Railroad
Vs.
Railroad Commissioners et al.

A. C. L. Railroad
Vs.
Railroad Commissioners et al.

G. S. & F. Railroad
Vs.
Railroad Commissioners et al.

These cases are pending in the United States Circuit Court for the Northern District of Florida. Messrs. Bry-

an & Bryan of Jacksonville, Florida, were employed by the Railroad Commissioners as special counsel in these cases. They were based upon the order of the Railroad Commissioners, known as Order No. 72, and in each case an injunction was sought by the railroad company to restrain the enforcement of the order. The copies of the pleadings are in the custody of the special counsel. I herewith transmit copies of the following papers filed in said cases:

L. & N. case:
1 copy of Bill.

S. A. L. case:
1 copy of Bill and Amendment.
1 copy of Bill.

A. C. L. case:
1 copy of Bill.

G. S. & F. case:
1 copy of Bill and Amendment.
2nd. Stipulation of counsel concerning Demurrer.
3rd. Copy of Answer to Bill.
4th. Stipulation of counsel as to taking testimony.

In each case an application was made for temporary injunction to restrain the enforcement of Order Number 72. Mr. N. P. Bryan and I went to Pensacola, and at the hearing argued the case in behalf of the Railroad Commissioners, but temporary injunctions were granted in all four cases. Answers have been filed in behalf of the Commissioners and the causes are pending ready for trial.

As to the case of the L. & N. Railroad vs. the Railroad Commissioners, pending in the United States Circuit Court for the Northern District of Florida at Pensacola, known as the "Three-cent rate" case, I have to say that this suit was instituted and the special counsel employed by the Commissioners several years before I became Attorney General. I therefore, know nothing of the terms

of the contract. There are no copies of papers relating to that suit in my office. I found none when I came into the office.

As to the four so-called "Lumber rate" cases, Messrs. Bryan & Bryan of Jacksonville, have a contract with the Railroad Commissioners by the terms of which, payment for their services in the four cases mentioned is regulated.

I note you wish to have a settlement with special counsel in the above named five cases and that you wish me to be present when you effect a settlement. I will, of course, comply with your request, although I apprehend there will be no necessity for my presence.

I am returning to the Railroad Commissioners with the papers mentioned herein, a letter from W. S. Yearwood, secretary of the Melrose Manufacturing Company, Melrose, Florida, to the Railroad Commissioners, dated December 4, 1906, relating to the operation of boats upon Lake Santa Fe through the Lake Alta Canel to a point near Waldo. This letter was referred to me by you on December 8th, 1906, with the request that I advise you whether the charters of the canals mentioned in the communication which was referred to me have a right to prevent the Melrose Manufacturing Company from operating a boat of their own through these canals. I was not furnished with a copy of the charter of the canal company and have not, therefore, been able to advise the Commissioners as requested. As the subject is one with which the Railroad Commissioners are not concerned, I hope my failure to respond has not impeded the discharge by the Commission of its official correspondence. This letter is the only communication upon my desk from the Railroad Comissioners which was undisposed of at the date of your recent letter to me advising me of the employment of special counsel.

I again assure the Commissioners of my sincere willingness and desire to aid them in all matters relating to their duties, and whenever my services as Attorney General may be required to the end that justice may be secured between the people and those corporations whose business

operations it is given to the Railroad Commissioners to regulate, I shall be glad to respond. I shall require the Commissioners whenever suit is contemplated in my name as Attorney General, before such suit is commenced, to submit for my consideration all of the facts that may constitute the bases of the contemplated suit, to the end that I may be advised as to the merits of any cause which may be instituted in my name as Attorney General.

Very respectfully,
W. H. ELLIS,
Attorney General.

LABORATORY FOR STATE CHEMIST.

Tallahassee, Fla., July 12, 1907.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

In reply to your verbal request for my opinion as to the authority of the Governor under Section 1280 of the General Statutes and Chapter 5662, Laws of Florida, 1907, to provide a suitable laboratory for the State Chemist, I have the honor to submit the following:

Section 1280 of the General Statutes expressly makes it the duty of the Governor to provide a suitable laboratory, furniture and all necessary chemicals for the State Chemist.

I do not regard Chapter 5662, Laws of 1907, as repugnant to Section 1280 of the General Statutes, but rather cumulative upon the subject of making provisions by the Governor for adequate laboratory facilities for the State Chemist. While Section 1280, General Statutes, was a part of Chapter 3858, Acts 1889, creating the office of State Chemist, and provision was then made for a laboratory, furniture and chemicals under the section referred to above, the section did not thereby become inoperative; provision for a laboratory being once made, the statute

was not made inoperative forever afterwards, so I regard the section as being still in force. If there was any question about it, it seems to me that it would be removed by the incorporation of the section in the new revision of the laws which went into effect in December, 1906. The section was then brought forward and continued in force.

I am of the opinion, however, that Section 1280, General Statutes, does not make an appropriation, because the amount is not specified. This view is held in California, where the Constitutional provision is similar to ours. This section, however, empowers and directs the Governor to prepare a suitable laboratory for the State Chemist, and I think so much of the contingent fund as may be necessary to provide a suitable laboratory, furniture and chemicals, may be used.

Chapter 5662 does not repeal Section 1280, General Statutes, but enlarges and extends the duty of providing increased laboratory facilities to meet the requirements of the act. I am of the opinion, however, that the amount which may be expended under the provisions of Chapter 5662 for all purposes must not exceed the sum of five thousand dollars, the amount appropriated by Section 14 to enforce and carry out the provisions of the act.

Very respectfully,

W. H. ELLIS,

Attorney General.

CERTAIN POWERS AND DUTIES OF THE STATE BOARD OF HEALTH.

Tallahassee, Fla., July 27, 1907.

Hon. E. M. Hendry,
President State Board of Health,
Tampa, Florida.

Dear Sir:

I am in receipt of a letter from Governor Broward, enclosing one addressed to me by you, requesting me to construe Section 1120 of the General Statutes of Florida,

and more particularly to advise you if the State Board of Health is empowered under the law of this State to exercise certain powers enumerated in your letter from Dr. Porter dated July 15th, calling my attention to your request of a former date and submitting other questions as to the powers and duties of the State Board of Health.

I realize that the questions submitted to me involving the powers of the State Board of Health are of great public importance. The public health is of paramount importance, certainly, and the supervision of all matters pertaining thereto is a trust upon the faithful execution of which depends very largely, if not entirely, the welfare of the people. The powers and duties devolving upon the Board of Health are of a public nature and of the highest importance and value, and should receive a liberal construction for the advancement of the ends for which they were bestowed.

In order to secure and promote the public health, the State, by constitutional provision and legislative enactment, created and established a State Board of Health, as an instrumentality or agency for that purpose. The Constitution provides, Article 15, Section 2, that: "The State Board of Health shall have supervision of all matters relating to public health, with such duties, powers and responsibilities as may be prescribed by law." The word "supervision" in the above quoted section of the Constitution does not in my opinion conflict in the slightest degree with Section 1 of Article III of the Constitution, by which the legislative authority of a State is vested in a Senate and a House of Representatives.

It was not the purpose of the framers of the Constitution, by vesting in a State Board of Health the supervision of all matters relating to public health, to vest in that board the power of declaring what the law shall be with regard to measures affecting the public health; there was no intention on their part to divide legislative authority upon this subject between the Legislature and the State Board of Health. The authority of supervision, granted in the section quoted, is purely administrative, and the powers, duties and responsibilities of the State Board of

Health in the exercise of such administrative functions are prescribed by legislative authority.

Like other governmental agencies, therefore, the State Board of Health has and may exercise only such powers as may have been given to it by express legislative enactment or necessary implication. While it is true that the nature of such boards is administrative only, the powers conferred upon them by the Legislature in view of the great public interest dependent thereon have always received from the courts a liberal construction; the right of the Legislature to confer upon such boards the power to make reasonable rules, by-laws and regulations is generally recognized by the authorities. In this State the Constitution expressly provides for the exercise of such right.

A long line of authorities support the proposition that the power granted to administrative boards of the nature of Boards of Health to adopt rules, by-laws and regulations reasonably adapted to carry out the purposes for which they were created, is not an improper delegation of authority within the meaning of the Constitutional inhibition against the delegation of legislative power.

Boards of Health cannot, by the operation of their rules and regulations, enlarge or vary the powers conferred upon them by the Legislature; the rules and regulations must be clearly within the scope of the purpose for which the board was created; in such case they have the force and effect of law.

I think that the powers of the State Board of Health as the same are defined in Section 1120, General Statutes, and by the laws of the State creating and establishing such board, except in cases specifically mentioned in the Statute, can be exercised only in cases of emergency where danger is existent, or there is good reason for believing that on account of the existence of disease in some locality there is danger of its spreading to other localities or being communicated to other persons. In other words, the rules and regulations can not be founded on fear and apprehension of possible danger. There must

be in existence some necessity or emergency, which in the judgment of the State Board of Health appears to make it necessary for the preservation of the public health that certain rules be promulgated and enforced.

The General Statutes, Sections 1153, 1154 and 1155, defines sanitary nuisances and prescribes the duties of the State Health Officer in regard thereto. Sections 1149, 1150, 1151 and 1152 provide for the sanitary inspection of hotels and boarding houses, and prescribes the duties of the State Board of Health and State Health Officer in regard thereto. Section 1121 provides for the inspection of certain classes of cities and towns by the State Health Officer with the view of ascertaining their sanitary condition, and provides ample power for the condemnation and removal of any and all objectionable sidewalks, pavements, buildings, wharves or other things that in the judgment of the health officer shall be likely to produce or cause the spread of epidemic diseases. Sections 1144 and 1145, General Statutes, provide for the compilation by the State Board of Health of vital statistics of marriages, births and deaths occurring in this State, with statements of the prevailing diseases and *all* information of a medical or sanitary nature that may be of value in the preservation of the public health, and provide for a report to be made by the attending physician, midwife, nurse or head of the family to the State Board of Health of every birth and death occurring in this State.

Concerning the duties of the State Board of Health and the objects to be attained as detailed in the sections above referred to, the powers of the State Board of Health to formulate and promulgate rules to effectively carry out those purposes and to a full and efficient discharge of those duties, are ample, and the reasonable rules prescribed and promulgated by the State Board of Health to effectively carry out the purposes of those sections have the force and effect of law and any disregard thereof or violation of the same by any person is punishable as a misdemeanor. (General Statutes, 3622.)

Sections 1114, 1146, 1147, 1148, 3619 and 3620 of the General Statutes provide for reports to be made to the State Board of Health of every case of yellow fever, small-pox or cholera that may come within the practice of every physician, and ample authority to the State Board of Health to take charge of such case or cases and adopt such measures with regard thereto as the Board deems necessary for the protection of the public from infection.

The above sections, taken in connection with Sections 1115, 1116, 1117, 1118 and 1119, provide ample means for the establishment and maintenance of quarantine. The regulations adopted by the State Board of Health relating to quarantine established under the provisions of the statutes, have full force and effect as law, and the power of the State Board of Health is ample to make the segregation or isolation of the disease complete and the protection of the public thorough. All rules and regulations adopted and promulgated by the State Board of Health, within the scope of the sections above referred to, should receive a broad or liberal construction in furtherance of the objects to be attained.

As to all matters not specifically covered by the sections referred to above, or other enactments which I may have inadvertently omitted to mention, relating to the public health, the rules and regulations of the State Board of Health prescribing measures for the preservation of the public health must rest upon something more substantial than the fear or apprehension of possible danger; that such rules and regulations may have the force and effect of law, there must exist at the time an emergency or present danger which the rules seek to avoid or overcome. In such cases the preservation of the public health, the object aimed at by the Statute, is secured only by compliance with the regulations prescribed by the Board of Health, at least such is the theory of the law.

Keeping in mind the principles above mentioned and applying them to the powers of a State Board of Health under the laws of this State, there should be very great difficulty in arriving at a satisfactory opinion as to the extent to which such powers may be exercised.

The State Board of Health may not by rule declare in *advance* that a certain act committed by individuals, municipalities, organizations or corporations, shall be considered a nuisance; such act can only be declared a nuisance after investigation when it is in fact such, nor may the Board declare in advance that any business or occupation, not *per se* injurious to public health, is a nuisance; it may only declare such business or occupation a nuisance when it is in fact such. Section 1153, General Statutes, is broad enough to enable the Board of Health to declare any act, whether committed under normal conditions or arising under any exigency, a nuisance if under the circumstances and conditions such act is in fact a sanitary nuisance. Section 1155, General Statutes, provides ample authority to the State Board of Health for abating nuisances.

In the absence of a present emergency of danger, such as presence of contagious or communicable diseases in such places, or where the objects hereafter named have not been contaminated by contact or exposure to such diseases, and in the absence of clear statutory authority upon the subject, I am of the opinion that the Board of Health has no authority or power by rule or regulation to require and provide for "sanitation and disinfection of all passenger cars, sleeping cars, steamboats and other vehicles of transportation in this State, and of all convict camps, penitentiaries, jails, factories, hotels, schools and other places used by or open to the public;" nor to prohibit spitting in places designated by the rules, nor to provide for the "vaccination of laborers or large aggregations of persons imported or entering into this State, or residing therein, for employment in the construction of railroads, or working of phosphate, naval stores, saw mills and tie camps;" nor to provide for the examination and licensing of embalmers and undertakers, nor to prohibit the embalming of dead bodies by any except undertakers and embalmers who have been licensed in accordance with regulations prescribed by the State Board of Health; nor to regulate the preparation for burial and the burial, transportation and other disposition of the bodies

of persons who have died in this State and of dead bodies brought into this State; nor to prohibit the transportation or disinterment of dead bodies; nor to prohibit burials and interments in this State without permits from the State Board of Health; nor to regulate the method of disposition of garbage or sewage or other refuse matter in or near any incorporated city or town or unincorporated town or village. Whenever under the provisions of Sections 1121, 1149, 1153, General Statutes, the State Health Officer finds upon inspection any act, vocation, building, street, sidewalk, sewerage system, garbage plant or other thing to be a sanitary nuisance, the power exists in the State Board of Health to cause the same to be abated.

As stated above Sections 1144, 1145 and 3624, General Statutes, afford ample authority to the State Board of Health to adopt rules and regulations for the thorough administration of the law upon the subject of vital statistics and information of a medical and sanitary nature. The Board of Health is empowered under the above sections to provide a system of collecting such statistics, including the appointment and compensation of a sufficient number of persons to collect and tabulate the same. The assistance provided by Section 1145 must be utilized. Section 1144 provides for the distribution of the information acquired upon this subject.

I am of the opinion that the State Board of Health has the power to provide by rule or regulation for the treatment, segregation and disinfection of all animals having communicable or infectious diseases when such diseases in such animals constitute a menace to the public health. The Board may provide for the proper disinfection and fumigation of all articles, such as clothing, blankets, bedding and dry goods which, having come in contact or been exposed to an infectious or communicable disease, are shipped into this State.

Section 1148, General Statutes, provides ample authority to the Board of Health for providing for the care, treatment, segregation and isolation of persons infected with contagious or infectious diseases.

I am of the opinion that under the law of this State the State Board of Health has the power to establish and maintain a bacteriological laboratory or laboratories for the investigation of diseases and for the creation and manufacture of serums to be used in the treatment of disease toxins, and to this end the Board may purchase and hold real estate, erect a building or buildings, and equip the laboratory with such apparatus, chemicals and furniture as may be necessary to provide adequate facilities for the scientific investigation and detection of disease germs and the preparation of serums or anti-toxins. I think this authority is necessarily implied from the duties required by Sections 1121, 1149, 1150, 1153, 1154 and 1148, General Statutes. It would frequently be impossible to determine whether a thing was a sanitary nuisance unless it could be asserted after a scientific investigation that bacilli or disease germs existed in the thing under investigation in sufficient quantities to endanger the public health and render the spread of the particular disease probable. So the presence of a contagious or communicable disease in a person or animal suspected of suffering form a disease of such character could not in many cases be detected in sufficient time to prevent the communication of the disease to other persons and a consequent epidemic, unless the Board of Health was provided with the necessary facilities for the scientific investigation of sputa, excreta and the blood of patients, and in many cases the treatment of contagious diseases would be ineffectual and the duties of the State Health Officer but poorly performed under Section 1148, unless the Board of Health was provided with the facilities for the manufacture of certain serums to be used for the destruction of disease poisons.

I am of the opinion that the State Board of Health has no authority to acquire real estate by purchase (or gift) for the purpose of establishing a permanent hospital for indigent patients or a sanatorium for tuberculous patients.

Where contagious or infectious diseases become epidemic, or there is danger of their so becoming, and the

isolation of patients suffering from such diseases becomes necessary in the judgment of the health officer, temporary hospital or pest houses may be established, and there is authority in support of the position that under such circumstances, where an emergency is deemed to exist and it becomes necessary for the effective protection of the public health, a building may be purchased and used as a hospital or pest house.

In my opinion it is not within the power of the State Board of Health to employ a consulting sanitary engineer to advise and instruct the towns of the State in the construction of water works and the disposition and treatment of sewage, garbage and other waste. Whenever, upon an investigation of the conditions existing in any city or town, the State Health Officer discovers that the water works system or the method of the disposition and treatment of the sewage, garbage and other waste is defective, unsanitary and a menace to the public health, that conditions exist productive of disease whereby the lives and health of individuals are threatened, such water works system, sewage or garbage plant may be declared to be a sanitary nuisance and the Board of Health may abate the same.

I am of the opinion that the Board of Health may by rule or regulation prescribe vaccination where the danger is present from the disease then in existence or prevailing in a community, and in the judgment of the Board vaccination is deemed necessary for the preservation of the public health, and a means to prevent the spread of the disease; any violation of the rule prescribing vaccination under such circumstances would be punishable under Section 3622, General Statutes. I think that the Board of Health may prevent by regulation any person suffering from any communicable or infectious disease from spitting upon the sidewalks, or in public places where the disease germs or bacilli contained in the spittle may be transferred to other individuals, and thus endanger their lives or health.

Very respectfully,

W. H. ELLIS,
Attorney General.

FUNDS FOR EXPENSES OF MILITIA.

Tallahassee, Fla., July 31, 1908.

Hon. J. Clifford R. Foster,
Adjutant General of Florda,
Tallahassee, Florda.

Sir:

I am in receipt of your communication of this date stating that requisition had been made upon the Comptroller for a sum of money to be expended under the appropriation for an encampment and field exercises of the Florida State troops in 1907.

I note that the Comptroller thinks that the use of the appropriation may be restricted by the provisions of an act approved June 4th, 1907, Chapter 5603, entitled:

"An Act to Regulate the Making of Contracts and the Incurring of Obligations for the Expenditure of Money Payable Out of the General Fund of the State."

The term "current expenses" of the State, as used in Sections 1 and 2 of the act, in my opinion means, the usual, ordinary or running expenses of the State government.

Sheldon v. Purdy, 49 Pac. 228.
State v. Board of Education, 53 Atl. 236.

The maintenance of the organized militia of this State to that degree of efficiency necessary to reach the full purpose and object of the act creating and establishing it, is one of the regular, ordinary and running expenses of the State government. Section 720 of the General Statutes requires every company and battery of the Florida State troops, not excused by the Governor, to participate in practice marches or go into camp of instruction at least five and not more than ten consecutive days, and shall assemble for drill and instruction at company, battalion or regimental armories not less than twice a month during each year. Section 715 makes the commanding officer responsible to the Governor for the general efficiency of the organized militia and for the drill, instruction, small arms and artillery practice.

The expense necessarily incurred in carrying out the above provision of the law arises every year and is permanent. In my opinion, such expense is a current expense within the meaning of the act.

Yours respectfully,

W. H. ELLIS,
Attorney General.

FUNDS—"RUNNING" AND "CURRENT" EXPENSES NOT "EXTRAORDINARY" EXPENSES OF STATE GOVERNMENT.

Tallahassee, Fla., August 5, 1907.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of the 31st ultimo requesting me to construe Chapter 5603, Laws of 1907, so far as it relates to certain other statutes named in your letter.

Section 1 of Chapter 5603 provides, that no board, department, officer, commission or committee, or other person or persons charged under the provisions of any act of the Legislature with the expenditure of any money payable out of the General Revenue Fund shall make any contract or incur any obligation for the payment of any sum out of the treasury of the State of Florida, except for the salaries of public officers and other current expenses of the State, except expenses of operation of schools, without first ascertaining from the Board of Commissioners of State institutions that the funds necessary to meet such payments will be available when the same shall become due and payable, and constitute a charge against the State. Section 2 of the act provides that the appropriations made for school purposes shall be payable out of the first funds available under the provisions of "this act" *after* payment of the salaries of public officers, and other current expenses as therein before provided. It also provides that the money for such appropriations shall be

available as fast as they come in without waiting for the whole amount of any such appropriation to be received into the treasury.

The purpose of this act is obvious. The necessity for careful, prudent management of the General Revenue Fund became apparent to the Legislature; it was evident that the General Revenue Fund was insufficient to meet the appropriations made from it, in excess of the current expense of the State, so that it became necessary for the welfare of the State that no contract should be made nor obligation incurred for the payment of money from that fund, except for the current expenses of the State, not including appropriations for school purposes, until the Board of Commissioners of State Institutions should say that the funds would be available to meet the proposed obligation when the same should become due.

It is my opinion that every proposed expenditure from the General Revenue Fund, including the appropriations for school purposes, which can not be classed as current expenses or salaries of public officers, is prohibited by the terms of this act until the Board of Commissioners of State Institutions authorizes such expenditure by stating that the funds are available or will be when the obligation becomes due.

The term "current expenses of the State," as used in the first section of the act, means the usual, ordinary or running expenses of the State. An expense which is fixed not in amount but in character, such as the expense of maintaining the different departments of the government, collection of revenue, maintenance of the Florida Hospital for the Insane, maintenance of the free school system. Other expenses are not current but extraordinary, unusual. The erection of buildings, the purchase of building sites, appropriations for the Governor's mansion, for a lock in Hicpochee Canal, for printing Supreme Court Reports, for a monument at Chickamauga, for relief of Daniel Campbell and other Trustees, to aid the Florida State Midwinter Fair Association and to aid the West Florida Fair Association are, in my opinion, unusual or extraordinary expenses, and are not part of the current

expenses of the State. The expense of preparing agricultural statistics under Chapter 5609, and the expenses incurred for the yearly encampment of the State troops are current expenses within the meaning of the act.

I note that you say Chapter 5726 failed to receive the signature of the President of the Senate. You must be in error about this, as Chapter 5726 is entitled "An Act for the relief of J. J. Fitzgerald, S. K. Gillis and Daniel Campbell as Trustees." On pages 68, 70 and 71, of the Journal of the Senate of May 29, 1907, appears the following language: P. 68—"The President announced that he was about to sign." P. 70—"An Act for the Relief of J. J. Fitzgerald, S. K. Gillis and Daniel Campbell, as Trustees." P. 71—"The acts above were thereupon duly signed by the President and Secretary of the Senate and ordered returned to the Chairman of the Joint Committee on Enrolled Bills to convey to the Governor for his approval."

Very respectfully,
W. H. ELLIS,
Attorney General.

COSTS OF HOLDING INQUESTS.

Tallahassee, Fla., August 5, 1907.

Hon. B. E. McLin,
Commissioner of Agriculture,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your favor of the 26th enclosing letter from Hon. W. B. Davis of Taylor County and a verdict of a Coroner in the case of W. H. Shands. I note that Judge Davis says that Shands was a county prisoner from Jackson County.

I am also in receipt of a letter from Judge Davis regarding the same matter. It seems that the County Commissioners of Taylor and Jackson Counties each refused to pay the cost of the inquest.

Section 4087, General Statutes, provides that when inquests of the dead shall be held; Section 4087 provides when they shall not be held. If the inquest upon the body of Shands was held (or rather, attempted to be held), notwithstanding the provisions of Sections 4086 and 4087 General Statutes, then no costs have accrued nor may any compensation be paid to the jury. When inquests are held in accordance with law, the costs must be paid by the county in which the dead body is found.

Very respectfully,

W. H. ELLIS,

Attorney General.

FOREIGN CORPORATIONS.

Tallahassee, Fla., August 5, 1907.

Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Fla.

Dear Sir:

Referring to the letter of Mr. E. J. L'Engle relating to the act of the Legislature entitled "An Act to Prescribe the Terms and Conditions upon which Foreign Corporations for Profit may Transact Business or Acquire, Hold or Dispose of Property in this State," I have to say that Section 6 of the act expressly exempts any foreign corporation whatever which was transacting business in this State at the time the act became effective from the provisions of the act. Letter of Mr. L'Engle returned.

Yours truly,

W. H. ELLIS,

Attorney General.

EXPENSE OF GEOLOGICAL SURVEY.

Tallahassee, Fla., August 14, 1907.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

Your letter of the 10th requesting my opinion as to whether Section 5681, Laws of 1907, entitled "An Act Establishing a Geological Survey of the State of Florida, to Provide for the Appointment of a State Geologist, to Define his Duties, and to Provide for the Maintenance of the Survey" creates an expense which may be considered as current expense within the meaning of Chapter 5603, Acts of 1907.

I am of the opinion that Chapter 5681 provides for a work to be performed by the State government, the expense of which becomes a current expense within the meaning of Chapter 5603, Acts of 1907.

Yours very truly,
W. H. ELLIS,
Attorney General.

TAX COLLECTORS' COMMISSION.

Tallahassee, Fla., August 26, 1907.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your communication of recent date asking me to advise you in regard to your "course in computing the commissions on taxes collected in 1907 under the act of the last Legislature.

In the conversation to which you referred, you said that you had made settlements with Tax Collectors for the collection of State taxes upon the basis prescribed by

Chapter 5596 of the Laws of 1907. Section 64 of this statute provides that Tax Collectors shall be entitled to commissions upon the aggregate amount of State taxes, general and special, including licenses, collected by him and paid into the treasury, but not on each separately, as follows: On the first four thousand dollars, ten per cent.; on the next three thousand dollars, five per cent., and on the balance one and one half per cent.

The act provides that the commissions for collecting the State tax shall be audited and allowed by the Comptroller, and paid by the Treasurer upon warrant therefor. Section 67 of the Act provides that it shall go into effect upon its passage. It was approved June 18th, 1907, and went into effect that day.

There is no doubt that the Legislature may, in the absence of constitutional restriction, express or implied, increase or decrease the emoluments pertaining to any office of its own creation. The office of Tax Collector was created by the Constitution of 1895, but the powers, duties and compensation of such officer, the Constitution prescribes, shall be prescribed by law.

Under this section of the Constitution the Legislature, I think, has the power to increase or diminish the emoluments of the office of Tax Collector during the term of office of such official. It does not follow, however, that the Legislature has the authority by legislative enactment, to confiscate the fees of a Tax Collector which may have been previously earned by such official.

I am of the opinion that whatever fees may have been earned by the Tax Collector of any county in this State under the Act of 1895, as amended by the Act of 1897, up to June 18th, 1907, are the property of such official, to which he has a vested right.

Under the provisions of Chapter 4322 of the laws of 1895, as amended by Chapter 4515, Laws of 1897, the Tax Collector was entitled to commissions upon the aggregate amount of State taxes, general or special, including licenses collected by him and paid into the treasury, but not on each separately, as follows:

On the first two thousand dollars ten per cent., on the next two thousand dollars five per cent., and on the balance two per cent.

In order for the Tax Collector to have earned such commissions it was necessary for him not only to have collected the State taxes, but have paid the same into the State Treasury. When, by such collection of State taxes and payment thereof into the State Treasury, a Tax Collector had earned the commissions prescribed by the last mentioned Acts of the Legislature, he had a vested right in such commissions, or fees, and the Legislature at its session of 1907 could not deprive him thereof.

I am of the opinion, therefore, that you, as Comptroller, should audit and allow the commissions of the various Tax Collectors upon the State taxes which may have been collected by them and paid into the treasury up to June 18th, 1907, upon the basis prescribed by Chapter 4322 of the Laws of 1895, as amended by Chapter 4515 of the Laws of 1897, and upon all State taxes collected and paid into the treasury subsequently to June 18th, 1907, you should audit and allow their commissions upon the basis prescribed by Chapter 5596 of the Laws of 1907.

Yours very truly,

W. H. ELLIS,

Attorney General.

DEED TO ARMORY IN APALACHICOLA.

Tallahassee, Fla., August 30, 1907.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of the 29th enclosing a deed from Franklin County to the State of Florida for the armory located in the city of Apalachicola. The deed is correctly drawn and properly executed.

I am of the opinion that Chapter 5284, under the pro-

visions of which the State becomes the purchaser of the property described in the deed, is such an act providing for the expenditure of money payable out of the General Revenue as is contemplated by Chapter 5605 of the Laws of 1907, and that the expense incurred by the State in the purchase of said property is not part of the current expense of the State, and before the obligation is incurred a certificate sould be obtained from the Board of Commissioners of State Institutions that the funds necesary to meet the payment for the property are available.

I herewith return the deed from Franklin County to the State of Florida and the letter of Hon. R. H. Porter to you, dated August 20th, 1907.

Yours very truly,
W. H. ELLIS,
Attorney General.

ELIGIBILITY OF F. B. STONEMAN FOR JUDGE OF CRIMINAL COURT OF RECORD.

Tallahassee, Fla., September 12, 1907.

Hon. N. B. Broward,
Governor,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your communication of the 9th instant requesting me to advise you if Honorable F. B. Stoneman, who is recommended for appointment as Judge of the Criminal Court of Record for Dade County, Florida, and who is over twenty-five years of age, was admitted to practice law in the Circuit Court for Orange County, Florida, several years ago, but who since that time removed to Dade County and has not been in regular practice at the bar of this State for more than three years, and who, for that period of time, procured no license to practice law in this State, is eligible to appointment as Judge of the Criminal Court of Record for Dade County.

The Legislature, at its last session, by Chapter 5764,

established a Criminal Court for Dade County. The Act went into effect by special provision from and after June 15, 1907.

Section 24 of Article V of the Constitution of 1885 provides:

"There shall be established in the County of Escambia, and upon application of a majority of the registered voters in such other counties as the Legislature may deem expedient, a criminal court of record, and there shall be one judge for each of the said courts who shall be appointed by the Governor and confirmed by the Senate, who shall hold his office for four years and whose salary shall be one thousand dollars a year, the counties paying the salaries."

Section 7 of Article IV of the Constitution provides:

"When any office from any cause, shall become vacant, and no mode is provided by this Constitution or by the law of the State for filling such vacancy, the Governor shall have the power to fill such vacancy by granting a commission for the unexpired term."

Under the provisions of Section 298 of the General Statutes, the office of Judge of the Criminal Court of Record for Dade County is vacant. Section 301 of the General Statutes provides:

"That in all such cases and in all other cases in which a vacancy may occur, if the office be a State, district or county office (other than a member or officer of the Legislature) it shall be the duty of the Governor to fill such office by appointment, and the person so appointed shall be entitled to take and hold such office until the same shall be filled by an election as provided by law, and in cases requiring the confirmation or the advice and consent of the Senate, the person so appointed may hold until the end of the next ensuing session of the Senate, unless an appointment be sooner made and confirmed and consented to by the Senate."

Under the provisions, therefore, of Section 7, Article IV of the Constitution and Section 301 of the General Statutes, the Governor shall fill the vacancy by appoint-

men, to hold not longer than the end of the next ensuing session of the Senate, and that when the next ensuing session of the Senate convenes it will be the duty of the Goveror to submit an appointment to fill such vacancy to the Senate for confirmation.

Advisory Opinion, 45 Fla. 154; 44 Fla. 289.

Section 3, Article V of the Constitution provides:

"No person shall ever be appointed or elected as a Justice of the Supreme Court or Judge of a Circuit Court or Criminal Court that is not twenty-five years of age and an attorney at law."

The qualifications of officers may be prescribed by statutes when not expressly or impliedly prohibited by the Constitution. State ex rel. Attorney General v. Bryan et al. 50 Fla. 293; text 376.

Section 3869 of the General Statutes provides:

"The judge shall not be younger than twenty-five years of age and shall have been an attorney in regular practice at the bar of this State for not less than one year at the time of his appointment."

Section 3, Article V of the Constitution quoted above does not prescribe the qualifications of a judge of the Criminal Court of Record by affirmatively designating such qualifications so as to preclude the Legislature from prescribing other qualifications, but it simply forbids the appointment of a person to such office who does not possess certain qualifications. The above clause of the Constitution is not, therefore, in my judgment, a limitation upon the power of the Legislature to amplify or explain the qualifications enumerated in the Constitution, and does not deprive the Governor of his power to appoint within a reasonable range of discretion.

The statutory provision that the judge shall not be younger than twenty-five years, and shall have been an attorney in regular practice at the time of his appointment for not less than a year, is designed to secure the proper administration of the law, and is binding upon the Governor, particularly as the applicant is to fill a newly

established office without confirmation by the Senate, which appointment is authorized in part, at least, by statute.

Criminal Courts of Record are established by the Legislature in such counties as it may deem expedient, upon the application of a majority of the registered voters in such counties. The reason for such applications is usually found in the existence of a large criminal docket which interferes with the discharge of other duties by the Circuit Courts. It is necessary that the judge of the court should be a practical lawyer. That is to say, one who has had experience in the regular practice at the bar of this State for a sufficient length of time, and at a time when his experience would be of practical benefit to him and the people whom he serves in the administration of the law. He should be familiar with the pleading and practice of the courts, and should have familiarity with the decisions of the courts upon the questions that are likely to be considered by such a court. In other words, his experience as a practitioner before the bar of this State should be such as to equip him to enter at once upon the discharge of his duties as judge. The intention of the statute is obvious. The judge must have had at least one year's experience in the regular practice at the bar of this State, and that experience must have recently preceded the date of his appointment. If it were otherwise it is easy to conceive how the plain purpose of the law could be defeated. While it may be true in theory that "once a lawyer, always a lawyer," it is not true that an attorney may abandon his profession for a long period of time, during which time his mind may be occupied with other matters, engrossed by other vocations, and in which time he has made no effort to prepare himself for the arduous duties devolving upon him and required in the regular practice, and then resume the vocation of an attorney at law with any assurance, either to himself or the public, that he is fully equipped and prepared to protect the interests of clients and secure their rights.

There is no profession more exacting in its require-

ments than that of the practice of law, and no one realizes more than the lawyer himself how years of inattention to his studies handicaps him in such practice.

The Legislature having these facts in mind, therefore, intended that one year's experience should be in close proximity to the date of appointment, as the words "at the time" plainly signify. The words would be useless and meaningless—mere redundancy of expression—if they did not mean the one year's experience must have been at a time near the date of appointment.

Lexicographers give the word "at" the meaning of proximity to—nearness; and the phrase "at the time of" has been construed to mean "next proceeding the time designated."

As Honorable B. F. Stoneman has not been an attorney in regular practice at the bar of this State for one year at this time, within the meaning of the statute, as I understand it, I am of the opinion that he is ineligible to appointment as Judge of the Criminal Court of Record for Dade County.

Yours very truly,
W. H. ELLIS,
Attorney General.

LICENSE TAX ON PARLOR CARS.

Tallahassee, Fla., September 17, 1908.

Hon. W. V. Knott,
State Treasurer,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of the 16th requesting my advice if it is proper for the State Treasurer under the law stated in your letter to receive from the Florida East Coast Railway money paid for State license tax for parlor cars with buffet for the period ending October 1, 1907, and for the State license tax for parlor and sleeping cars for

period beginning October 1, 1907, and to issue licenses for the operation of parlor and sleeping cars.

In reply I beg to say that Chapter 5597, which is entitled "An Act Imposing Licenses and other Taxes, Providing for a Payment Thereof, and Prescribing Penalties for Doing Business without a License or Other Failure to Comply with the Provisions Thereof," provides in Section 12, that every State or County license shall be furnished by the County Judge under his seal of office to the Tax Collector on the blanks published by the Comptroller, after signing the same and taking his receipt therefor, and the Tax Collector shall fill out and sign each license before issuing the same to the person or persons paying him the necessary amount therefor.

This section also provides that the Tax Collector shall make a duplicate of each license issued in a book furnished by the County Judge for that purpose, and shall file such duplicate license with the County Judge. It also provides that if the payment of a license tax is to be made to the State Treasurer or the Comptroller the license shall be issued by the officer to whom payment must be made.

The act does not provide for the payment of the license tax by the sleeping and parlor car companies to be made to the State Treasurer nor to the Comptroller.

I am of the opinion, therefore, that the licenses should be issued by a tax collector as provided for in Section 12, and the money therefor, should be paid to him.

Yours very truly,

W. H. ELLIS,

Attorney General.

COMMISSIONS OF TAX COLLECTORS.

Tallahassee, Fla., October 14, 1907.

Hon. Ernest Amos,
State Auditor,
Tallahassee, Fla.

Dear Sir:

I have your letter of the 8th instant asking for an official construction of Section 64, Chapter 5596, Laws of Florida.

The section referred to provides that Tax Collectors shall be entitled to commissions upon the aggregate amount of State taxes, general and special, including licenses, collected by him and paid into the treasury (but not on each separately) as follows: On the first four thousand dollars, ten per cent., on the next three thousand dollars, five per cent., and on the balance one and one-half per cent.

The act provides that the commissions for collecting the State tax shall be audited and allowed by the Comptroller, and paid by the Treasurer upon warrant therefor. Section 67 of the act provides that it shall go into effect upon its passage. It was approved June 18, 1907, and went into effect that day.

There is no doubt that the Legislature may, in the absence of constitutional restriction, express or implied, increase or decrease the emoluments pertaining to any office of its own creation. The office of Tax Collector was created by the Constitution of 1855, but the powers, duties and compensation of such officer, the Constitution prescribes, shall be prescribed by law.

Under this section of the Constitution the Legislature, I think, has the power to increase or diminish the emoluments of the office of Tax Collector, during the term of office of such official. It does not follow, however, that the Legislature has the authority, by legislative enactment, to confiscate the fees of a Tax Collector which may have been previously earned by such official. I am of the opinion that whatever fees may have been earned by the

Tax Collector of any county in this State under the act of 1895, as amended by the act of 1897, up to June 18, 1907, are the property of such official to which he has a vested right.

Under the provisions of Chapter 4322 of the laws of 1895, as amended by Chapter 4515, laws of 1897, the Tax Collector was entitled to commissions upon the aggregate amount of State taxes, general and special, including licenses, collected by him and paid into the State Treasury (but not on each separately) as follows: On the first two thousand dollars, ten per cent., on the next two thousand dollars, five per cent., and on the balance two per cent.

In order for the Tax Collector to have earned such commissions it was necessary for him not only to have collected the State taxes, but to have paid the same into the State Treasury. When by such collection of State taxes payment thereof into the State Treasury, a Tax Collector had earned the commissions prescribed by the last mentioned acts of the Legislature, he had a vested right in such commissions, or fees, and the Legislature at its session of 1907 could not deprive him thereof.

I am of the opinion, therefore, that Tax Collectors should be allowed commissions upon the State taxes which may have been collected by them and paid into the treasury up to June 18th, 1907, upon the basis prescribed by Chapter 4322 of the Laws of 1895, as amended by Chapter 4515 of the Laws of 1897, and upon all State taxes collected and paid into the treasury subsequently to June 18th, 1907, commissions should be allowed upon the basis prescribed by Chapter 5596 of the Laws of 1907.

Yours very truly,

W. H. ELLIS,

Attorney General.

LICENSE TAX ON GREEN GROCERS AND PEDDLERS.

Tallahassee, Fla., October 22, 1907.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I have your letter of the 5th inst., enclosing one from Hon. D. P. Smith, Tax Collector of Volusia County; also letter from Hon. H. A. Bowles, Tax Collector of Jackson County, and Captain G. A. Nash of Ocala, Florida.

In all the matters referred to in the communications mentioned it is the duty of the Tax Collector to collect the license imposed by the Act of the Legislature for conducting or managing the businesses mentioned in the letters referred to.

The statute does not require the Comptroller to construe the act, nor does it make him the collector of the license taxes imposed by the act.

The Attorney General is not the legal adviser of county officials; his opinion, therefore, not being regarded as official, is not binding upon the county officials. Such being the case, a different course than the one suggested by the Attorney General might be followed by the county officials, and litigation result therefrom; in which case—if such litigation is of a criminal character—it would become the duty of the Attorney General, if such litigation ever reached the Supreme Court, to represent the State, which duty might involve the necessity of assuming a position contrary to the suggestions which he had formerly officially made. Subject, therefore, to the above views, I will give my opinion upon the matters referred to in the letters mentioned.

The paragraph referred to in Mr. Smith's letter, at the bottom of page 55 and the top of page 56, does not, in my judgment, refer to drummers, but applies exclusively to traveling dealers who have not obtained a license as traveling dealers, who are defined by that paragraph to be peddlers. This paragraph, as I stated, in my opinion,

does not apply to drummers who represent either foreign or domestic wholesale houses.

I think that a merchant's license does not authorize one to sell green groceries or fresh fruits and nuts, and a merchant who desires to sell green groceries, fresh fruits and nuts, will have to take out an extra license for that business, just as he would have to take out an extra license to deal in pistols, bowie knives, knuckles, rifles, etc.

I am also of the opinion that a merchant's license does not authorize one to carry on the business of a carriage repository not connected with a factory; so a merchant who deals in carriages, wagons and buggies will have to take out a license to carry on the business of carriage repository and a license as a merchant.

In regard to the question submitted by Captain Nash, I have to say that I think the manager of the armory of the Ocala Rifles, which armory is used sometimes as a hall in which traveling troupes give performances, should pay a license of fifty dollars to the State if the population of Ocala is between five and ten thousand; and if it is less than five thousand, then the manager should pay a license tax of ten dollars.

I herewith return the letters of Captain Nash, Hon. H. A. Bowles and Hon. D. P. Smith.

Yours very truly,

W. H. ELLIS,

Attorney General.

LICENSE TAX ON TELEPHONE AND TELEGRAPH COMPANIES, ETC.

Tallahassee, Fla., October 22, 1907.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of the 9th instant, enclosing one from Adams Brothers, dated October 7th; the

Southern Bell Telephone & Telegraph Company, of October the 7th, enclosing a statement and check for two hundred dollars, and a letter from Hon. G. M. Deason, dated October 7th.

As to the question submitted by Adams Brothers, I have to say that a merchant's license does not authorize one to carry on the business of a green grocer.

The Southern Bell Telephone & Telegraph Company enclose check for two hundred dollars in payment of the State license tax for the year 1907, and request you to issue a license. No question is submitted in this matter, and I therefore do not understand your request to advise you "upon each of the questions asked."

Under the act of 1903 telegraph companies were required to pay to the State Comptroller a tax of five hundred dollars for State purposes, and telephone companies were required to pay in each place where they did business a tax graded according to the capital stock. Under the act of 1907 telegraph companies are required to pay to the Comptroller a tax of fifty cents per mile, based upon the actual distance from point to point, and not the number of miles of wire, but telephone systems with one hundred instruments or more are required to pay a license tax of twelve and one-half cents for each instrument, and I think this applies to each town or city in which such system is established. The County Tax Collector is the proper person who should collect this tax and issue the license.

As to the question submitted by Hon. G. M. Deason, I think that he should deliver the "still" pursuant to the sale, and remit the amount of the proceeds along with the license tax collected for the State, and to report to the State Attorney the names of the persons constituting the firm of S. Benett & Company, whose duty it will be to file an information against them.

I herewith return the letter of Adams Brothers, that of the Southern Bell Telephone & Telegraph Company,

their statement and check for two hundred dollars, and the letter of Mr. Deason.

Yours very truly,
W. H. ELLIS,
Attorney General.

REQUEST FOR SERVICES OF INSPECTOR EMPLOYED BY RAILROAD COMMISSIONERS.

Tallahassee, Fla., October 31, 1907.

Hon. R. Hudson Burr,
Chairman Railroad Commissioners,
Tallahassee, Florida.

Dear Sir:

During the month of December, 1906, I received petitions from the business men and patrons of the Atlantic Coast Line Railroad Company living along its line of road from Palatka to St. Petersburg, principally at Ocala, Holder, Floral City, Wauchula, Inverness, Newberry, Williston, Trilby, Dunellon, Lakeland, Bartow, Arcadia, Punta Gorda, Citronelle, Hernando, Fort Meade, Kendrick, Center Hill, Martel, Fort Myers, and other places protesting against the unsafe condition of its roadbed and tracks, insufficient rolling stock and motive power and lack of management in the distribution and transportation of its cars, stating that the said road had failed and was failing in the performance of its duties as a common carrier; and had failed and was failing to receive freight offered to it as a common carrier and to forward the same within a reasonable time, and had failed to provide reasonable facilities for moving freight offered along its line of road, and that such failure on the part of the railroad company had resulted in great confusion and delay in the transportation of freight to the great loss to the citizens, all of which the petitioners offered to prove by competent evidence.

On the 9th day of January, 1907, I filed a petition for

a writ of mandamus against the Atlantic Coast Line Railroad Company in the Supreme Court of Florida upon the promise of a large number of the business men and citizens interested that they would see that all this evidence would be promptly furnished when needed, whereupon the railroad company filed a motion to quash the writ. Oral arguments were made in the case upon the propositions of law by counsel for the railroad and me for the State.

On the 20th day of February the Supreme Court handed down its decision upon the motion to quash, holding that the writ would issue to compel the company to repair its roadbed and track and place the same in a reasonably safe and suitable condition.

An order was made by the court allowing me to amend the writ, and an amended writ was filed February 27th, 1907. The railroad company again moved to quash the writ and also filed a motion to strike the parts of the writ from the record.

The motion to strike was denied, and as to the motion to quash, the court held that the relator should amend so that the writ should not undertake to dictate the dimensions of the crossties or other material to be used in the repair of the roadbed and track, and the respondent should have until April 9th to plead. I then prepared a second amended writ and filed the same within the time allowed by the court, and the railroad company filed an answer to the second amended writ within the time allowed by the court.

A motion was made by me to compel the company to amend its answer so as to tender an issue, and the court granted the motion. This left an issue between the State and the railroad company upon the question of fact as to the physical condition of the roadbed and track. The order of the court allowed the relator five days in which to join issue upon the answer, and within that time I filed in the court a joinder of issue upon the answer of the railroad company; so the case now stands on a question of fact as to the physical condition of the roadbed and

track of the Atlantic Coast Line Railroad Company upon the lines described in the alternative writ.

The Legislature failed to make appropriation to enable this office to obtain evidence as to the physical condition of the roadbed and track, although a bill for that purpose, approved by me, was introduced in the Legislature of 1907 and failed of passage, and the persons upon whose representations I instituted proceedings having utterly failed to fulfill their promise to furnish evidence when needed; this office being provided with no funds with which to obtain the evidence, the case is now at a standstill until this evidence can be secured.

Under Chapter 5622, Laws of 1907, it is made the duty of the Railroad Commissioners and they are empowered to employ a competent inspector to inspect the physical condition of the roadbed, rights of way, tracks, depots, rolling stock and other fixtures and equipment of any railroad or railroads being operated wholly or in part in this State, etc.

The purpose of this communication is to request the Railroad Commissioners to have your engineer inspect in detail the physical condition of the lines of road referred to between Palatka and St. Petersburg, and more particularly described in the alternative writ, and make notes of the condition of each mile of the said roadbed and track, the number of broken fishplates or angle irons, decayed and useless ties, etc., within each mile of the main line of road, with a view of having said engineer testify as to such condition in order that this case may be carried to a final termination, and the interests of the people thereby subserved.

Yours very truly,

W. H. ELLIS,

Attorney General.

REWARDS IN CASES OF VIOLATION OF LOCAL OPTION LAW.

Tallahassee, Fla., November 14, 1907.

Hon. Ernest Amos,
State Auditor,
Tallahassee, Fla.

Dear Sir:

In regard to your letter of recent date, in relation to the payment by counties of fifty dollars reward for the conviction of persons violating the local option law, I beg to advise that Chapter 5690 of the Laws of 1907 is an act to amend Sections 3556 and 3448 of the General Statutes.

Section 3556 of the General Statutes did not contain the provision relating to the payment of fifty dollars to the person furnishing the testimony upon which a conviction for selling liquors in any county or precinct voting against such sale is secured, but Section 3448 did expressly provide that one hundred dollars of the fine collected in the case against a person for selling liquors without a license should be paid to the officer arresting the person and securing the evidence to convict.

I am of the opinion that it was not the purpose of Chapter 5690, in so far as it amended Section 3448, to deprive a sheriff or any police officer of the reward for services performed in the matter of securing testimony to convict persons for selling liquors without a license, but on the other hand, the purpose of the statute was to extend the provisions of Section 3448 to any person who might furnish testimony upon which a conviction for selling liquors without a license might be secured.

I think this is the purpose of Chapter 5690, so far as it relates to Section 3556 of the General Statutes; the evident purpose of the act being to stimulate and encourage the detection and punishment of this particular class of crimes, and I think the language of the act is broad enough to include within its provisions any sheriff

or police officer who secures and supplies the evidence upon which a conviction under such section is secured.

Yours very truly,
W. H. ELLIS,
Attorney General.

INSURANCE COMPANY.

Tallahassee, Fla., October 22, 1907.

Hon. W. V. Knott,
State Treasurer,
Tallahassee, Fla.

Dear Sir:

I have your letter of even date *in re* Peoples' Mutual Life Association.

I think that it is an insurance company within the meaning of Section 8, Chapter 5579 of the Laws of 1907.

I herewith return the pamphlet, together with letter of Hon. A. C. Croom.

Yours very truly,
W. H. ELLIS,
Attorney General.

INSURANCE COMPANY.

Tallahassee, Fla., November 14, 1907.

Hon. W. V. Knott,
State Treasurer,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of recent date enclosing the original articles of incorporation of the Sunny South Co-Operative Insurance Company, Tampa, Florida.

I am of the opinion that the above named insurance company is not authorized to take any risks or transact any business of insurance in this State, unless it complies with the provisions of Section 2758 *et Seq.* of the General

Statutes, and that it is subject to the license tax provided by Chapter 5597, Laws of 1907.

Herewith I return the original articles of incorporation of the Sunny South Co-operative Insurance Company as per your request.

Yours very truly,
W. H. ELLIS,
Attorney General.

MAINTENANCE OF STATE TROOPS.

Tallahassee, Fla., December 19, 1907.

Hon. J. Clifford Foster,
Adjutant General State of Florida,
Tallahassee, Fla.

Dear Sir:

In re your communication of recent date requesting my opinion upon the question whether, under the provisions of Chapter 5672, Acts of 1907, entitled "An Act to Provide for the Establishment of a Permanent Camp Site for the Florida State Troops;" the appropriation made under Chapter 5598, for six months of the year 1907, for encampments and field exercises of the Florida State troops, or so much thereof as may remain unexpended for that purpose may be used and expended for the purpose of preparing, equipping and maintaining the camp site provided for under Chapter 5672, Acts of 1907, during the year 1908, or at any time subsequently to the 31st of December, 1907.

Chapter 5672, providing for the establishment of a permanent camp site for the Florida State troops, provides, in Section 3, that any funds appropriated for the purpose of covering the expenses of encampments and field exercises for the Florida State troops, and not wholly so expended, may be applied to the purpose of preparing, equipping and maintaining this camp site. Section 1 of the act provides for the establishment of a permanent camp site for the Florida State troops upon a tract of land de-

scribed in that section. Section 2 grants to the State Armory Board the power to exercise the right of eminent domain in order to acquire so much of the land described in Section 1 as may be required for the purpose of establishing a permanent camp site for the Florida State troops.

In a former communication to you I expressed the opinion that the maintenance of the organized militia of this State to that degree of efficiency necessary to reach the purposes and objects of the act creating and establishing it, is one of the regular, ordinary and running expenses of the State government.

Section 720 of the General Statutes provides that every battery and company of the Florida State troops, not excused by the Governor, shall participate in practice marches or go into camp of instruction at least five and not more than ten consecutive days, and shall assemble for drill and instruction at company, battalion or regimental armories not less than twice a month during each year.

Section 715 makes the commanding officer responsible to the Governor for the general efficiency of the organized militia and for the drill, instruction, inspection, small arm and artillery practice, etc.

Chapter 5672, providing for the establishment of a permanent camp site for the Florida State troops, makes the maintenance, equipment and preparation of such camp site a fixed permanent and regular expense of the State government. I am advised that under the provision of said act the camp site has already been acquired and established by the Armory Board, and whatever money that may be expended thereon will be expended on account of preparing, equipping and maintaining the same, which, as stated, above, under the provisions of that act, is now a fixed, regular and permanent expense of the State government within the meaning of Chapter 5603 of the Laws of Florida, which is entitled "An Act to Regulate the Making of Contracts and the Incurring of Obligations for the Expenditure of Money Payable Out of the General Fund of the State."

Chapter 5672, so far as it seeks to make an appropriation for the purpose of preparing, equipping and maintaining the camp site, should be construed with Chapter 5598, entitled "An Act Making Appropriation for the Expenses of the State Government for Six Months of the Year 1907, for the Year 1908, and for Six Months of the Year 1909," not only because the preparing, equipping and maintaining the camp site is one of the regular expenses of State government under the provisions of Chapter 5672, but that chapter refers expressly to the appropriation contained in 5598, for the purpose of covering the expenses of encampments and field exercises for the Florida State troops.

The two statutes should, in my opinion, therefore, be construed together, and by thus doing, whatever deficiencies may exist in Section 3, so far as the same seeks to make an appropriation under the Constitution of Florida, are supplied by Chapter 5598, which, for the year 1907, appropriates a specific sum for encampments and field exercises of the State troops. By reading the two acts together, therefore, for the year 1907, a specific appropriation of fifteen thousand dollars is made for two purposes: (1) Encampments and field exercises; (2) Preparing, equipping and maintaining the camp site for the Florida State troops. Chapter 5598 was approved June 1, 1907; Chapter 5672 was approved two days later, to-wit, June 3, 1907.

If it was the purpose of Chapter 5598 to limit the expenditure of the appropriation of fifteen thousand dollars for encampments and field exercises to six months beginning July 1, 1907, and ending December 31, 1907, Chapter 5672, which was the last expression of the Legislature on that subject, amends the first act by making so much of the unexpended appropriation of fifteen thousand dollars for encampments and field exercises for 1907 available for preparing, equipping and maintaining the camp site, because if it should be contended that under the provisions of Chapter 5672 the unexpended appropriation for encampments and field exercises for the year 1907 should be applied to the preparing, equipping and maintaining

the permanent camp site during the year 1907, such contention, if carried into effect, would defeat the evident purpose or intention of the Legislature as evidenced by Chapter 5672, and thus one of the well recognized canons of statutory construction would be violated.

While the encampments and field exercises of the Florida State troops provided for under the general law are held every year, there is nothing in the act requiring such encampments and field exercises to be held at any particular time within that year, nor does the general act require that all of the companies or regiments of the Florida State troops should go into encampment at the same time, nor that all the field exercises should be held at the same time. It follows, therefore, that it is practically impossible to determine whether an appropriation for the encampment and field exercises of the State troops has been wholly expended until the expiration of the period for which such appropriation was made, or until the encampments and field exercises have in fact been held and completed, and all the expenses incurred therein have been ascertained and paid. The Legislature, being advised of this fact, must, therefore, have intended that the unused or unexpended appropriation for encampments and field exercises should be applied to the preparation, equipment and maintenance of the permanent camp site at such time after it had been determined that there remained unexpended any part of the appropriation for encampments and field exercises, which determination could only be arrived at as stated above, after the period had elapsed during which the encampments and field exercises might be held, or until they have been held and completed, and all of the expenses incurred therein have been ascertained and paid.

I am of the opinion, therefore, that Section 3 of Chapter 5672, Laws of 1907, construed in connection with Chapter 5598, constitutes an appropriation for the purpose of preparing, equipping and maintaining a permanent camp site for the Florida State troops; and second, that preparing, equipping and maintaining such camp site is a current expense of the State government within the meaning of

Chapter 5603, Laws of 1907, and that so much of the appropriation made by Chapter 5598 for encampments and field exercises for the year 1907 which may remain unexpended for that purpose during said period may be used after that time under the provisions of Section 3, Chapter 5672, for the purpose of preparing, equipping and maintaining a permanent camp site for the Florida State troops.

Yours very truly,
W. H. ELLIS,
Attorney General.

FEES OF COUNTY SOLICITOR.

Tallahassee, Fla., December 30, 1907.

Hon. N. B. Broward,
Governor,
Tallahassee, Fla.

Sir:

I have the honor to acknowledge receipt of your letter of the 26th instant enclosing a letter from Mr. A. D. Carmichael of Chipley, Florida, in relation to the payment of his fees as prosecuting attorney for the county of Washington.

It is noted that he complains that the County Commissioners refuse to pay the fees of the prosecuting attorney in cases where the defendants are convicted and make bond for the future payments of their fines and costs.

Section 18 of Article V of the Constitution provides that in counties where county courts are created by the Legislature that a prosecuting attorney for the county shall be elected and his duties and compensation shall be prescribed by law.

Section 9 of Article XVI of the Constitution provides that in all criminal cases prosecuted in the name of the State when the defendant is insolvent or discharged the legal costs and expenses, including the fees of officers, shall be paid by the counties where the crime was com-

mitted, under such regulations as shall be prescribed by law.

The compensation of the prosecuting attorney is fixed by Section 3 of Chapter 5565, Acts of 1905, at three hundred dollars per annum and the conviction fee provided by law. The conviction fee is five dollars for each conviction. Section 3892, General Statutes.

This compensation is provided by law to be paid by the county, and becomes due and payable by the county as soon as the judgment of conviction is entered by the court.

I do not regard the compensation of five dollars in all cases where convictions are obtained as costs of the court in such cases—it is simply a measure of the prosecuting attorney's compensation.

If the claim of Mr. Carmichael is based upon Section 3 of the act referred to and the section of the Revised Statutes above mentioned, it is a valid claim against the county and constitutes a part of the compensation due him by the county for the services rendered. I herewith return the letter of Mr. Carmichael.

Yours very truly,
W. H. ELLIS,
Attorney General.

POLL TAXES.

Tallahassee, Fla., January 1, 1908.

Hon. Ernest Amos,
State Auditor,
Tallahassee, Fla.

Dear Sir:

Your letter of the 14th ultimo has been received.

I am of the opinion that Section 41 of Chapter 5596, Laws of 1907, applies to the payment of poll taxes as well as ad valorem taxes.

I am also of the opinion that Section 64 of the same Chapter contemplates that the poll taxes shall be in-

cluded in the amount of taxes collected by the Tax Collector to form the basis for computing the commissions to be paid to him. I think that this commission is audited and allowed bf the County Commissioners.

Yours very truly,

W. H. ELLIS,

Attorney General.

GENERAL REVENUE FUND AS APPLIED TO SCHOOLS AND PUBLIC OFFICERS.

Tallahassee, Fla., January 1, 1908.

Hon. J. Clifford R. Foster,
Adjutant General,
Tallahassee, Fla.

Sir:

I am in receipt of your letter of the 30th ultimo, asking for my opinion as to whether Chapter 5603, Acts of 1907, applies to the appropriation made under Chapter 5284, Laws of 1903.

In my opinion the provisions of Chapter 5603 apply to any act of the Legislature under which any board, department, officer, commission or committee is charged with the expenditure of any moneys payable out of the General Revenue Fund except in so far as any such act may provide for the salaries of public officials and other current expenses of the State.

I am also of the opinion that the appropriation made under Chapter 5284, Laws of 1903, does not take precedence, under Chapter 5603, of appropriations made for school purposes.

In my opinion, under the provisions of Chapter 5603, the first money in the General Revenue Fund available after payment of the salaries of public officers and other current expenses, must be applied to school purposes.

Yours very truly,

W. H. ELLIS,

Attorney General.

TAXING OF CURED LEAF TOBACCO AND CAPITAL STOCK OF CERTAIN CORPORATIONS.

Tallahassee, Fla., January 8, 1908.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter enclosing communication from Hon. H. L. Shepard, Tax Assessor for Gadsden County, and a communication from Hon. R. M. Morgan, Tax Collector of Gadsden County.

I gather from these two communications that Mr. Shepard desires to know if he has the right to assess the leaf tobacco stored in the various packing warehouses in Gadsden County, and if the owners refuse to give in the same for taxation, how he shall proceed.

(2) Whether the capital stock of chartered corporations is taxable; and,

(3) If the capital stock and surplus of banking corporations are taxable.

Mr. Morgan, the Tax Collector of Gadsden County, in his communication gives information regarding the manner in which the tobacco grown in Gadsden County and vicinity is handled in the warehouses. I presume this information was submitted to you in order that you might have it before you when deciding whether the tobacco leaf dealers or warehouse men of Gadsden County are required under the law to pay a license tax as tobacco manufacturers.

Chapter 5596, Laws of 1907, in Section 1, provides that all real and personal property in this State, and all personal property belonging to persons residing in this State not thereby expressly exempted therefrom shall be subject to taxation in the manner provided by law.

Section 3 of the act defines personal property and provides that the term shall be construed to include all goods and chattels, moneys and effects, all boats and vessels,

all debts due or to become due from solvent debtors, whether on account, contract, note or otherwise, all public stocks or shares in all incorporated or unincorporated companies.

Section 4 of the act contains a schedule of classes of property exempt from taxation.

Section 1 of Article IX of the Constitution provides that the Legislature shall provide for a uniform and equal rate of taxation, and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes. The Constitution makes no exemption of property from taxation save property of the value of two hundred dollars of every widow that has a family dependent on her for support, and every person that has lost a limb or been disabled in war or by misfortune.

Section 16 of Article XIV, Constitution of 1885, provides that the property of all corporations, except the property of a corporation which shall construct a ship or barge canal across the peninsula of Florida, if the Legislature should so enact, whether heretofore or hereafter incorporated, shall be subject to taxation unless such property be held and used exclusively for religious, scientific, municipal, educational, literary or charitable purposes.

It does not appear that leaf tobacco, which is a farm product, comes within any of the exemptions prescribed by the Constitution or laws of the State. It is, therefore, in my judgment, subject to taxation as property within the meaning of Section 1 of Chapter 5596, just as cotton, syrup, corn or other farm products are subject to taxation.

Section 16 of the act referred to makes it the duty of every person owning or having the control, management, custody, direction, supervision or agency of property of whatever character that is subject to taxation under the

laws of the State to return the same for taxation to the County Assessor of Taxes in the proper county before the first day of April in each and every year, giving the character and true cash value of the same, and upon the failure of such person to do so, the assessment and valuation made by the assessing officer or officers shall be deemed and held to be binding upon such owner or other person or corporation interested in such property unless complaint is made of such assessment and valuation on the day set for hearing complaints and receiving testimony as to the value of any property, real or personal, as fixed by the County Assessor.

Section 17 of the act requires the County Assessor to require any person giving in the amount or list of his personal property to make oath before him that the same is full and complete, and any person refusing to take such oath shall not be permitted afterwards to reduce the valuation made by such County Assessor of his personal property for that year.

Section 13 of the act requires the County Assessor to set down in the assessment roll the full cash value of the personal property owned by or to be taxed to such persons as provided by law.

Section 17 of the act provides that the valuation of any item of property, real or personal, by the tax payer shall in no case prevent the County Assessor from determining its true value, and that if he has any reason to believe that the valuation of any item of property is too small he shall increase the same to its true value.

Section 18 provides that all personal estate liable to taxation, the value of which shall not have been specified under oath as aforesaid, shall be estimated by the County Assessor at its true cash value according to his best judgment and information, and his failure by neglect or refusal to make such estimate shall be cause of suspension by the Governor.

The sections of the statute above quoted constitute an answer to the assessor's first question. There can be no doubt that the tobacco is personal property within the

meaning of the statute, and the subject of taxation as such.

In regard to the taxation of the capital stock of corporations, Section 3 of Chapter 5596 defines such stock or shares in all incorporated or unincorporated companies as personal property or estate, and Section 1 provides that it is taxable when such corporation does not come within the exemption provided by the Constitution and laws. It would seem that it means the amount of capital stock paid in.

Section 8 of the act provides that the owner or holder of the stock shall not be taxed for the stock, provided that the stock is returned for taxation by the incorporated company and the taxes paid thereon by the company or the property of the corporation is assessed for taxes where located and taxes are then paid on such property. If the whole of a corporation's paid up capital stock is invested in property taxable within the county, it is clear that both the capital stock and such property should not be taxed. Under the statutes quoted in this letter, I think it is clear that the surplus of banking institutions is taxable as property.

Chapter 5597, Laws of 1907, provides for a license tax on manufacturers of cigars or tobacco. I am of the opinion that the tobacco leaf dealers of Gadsden County and vicinity who are engaged in the business of handling tobacco as described in the communication of Mr. Morgan, the Tax Collector, are not manufacturers of tobacco within the meaning of the act imposing a license tax upon manufacturers of tobacco.

It appears from the communication of Mr. Morgan that the tobacco leaf when severed from the soil is taken to a barn or shed, where it is hung up until cured. It is then tied into small bundles, packed in boxes or cases and then delivered to the warehouse men, who take the crude material and subject it to a certain process of sweating and other treament and pack it in bales, when it is then ready to be sold to the cigarmaker. Until it passes

through this process of sweating in the warehouse it is not in a merchantable or marketable condition, nor in condition to be used in the manufacture of cigars—the finished product.

The question is, whether this treatment of the crude leaf by the warehouse men is, within the meaning of the act, a manufacturer of tobacco.

The application of labor to an article, either by hand or machinery, does not necessarily make it a manufactured article. Such is the language of the Supreme Court of the United States in the case of Hartrauft v. Weighman, 121 U. S. 609. In that case the question arose as to the amount of duty that should have been exacted on a certain imported merchandise. It was contended on the part of the government that the merchandise, which consisted of shells, was subject to a duty of 35 per centum ad valorem under a schedule which provided for that percentage on manufactures of shells. On the other hand, it was contended that the articles were free or exempt from duty under a provision exempting "shells of every description not manufactured." The collector levied a duty of 35 per centum upon the shells, and the circuit court held that they were exempt from duty. The shells were of various kinds and came from various parts of the world, and before being imported to this country were subjected to certain processes by which the thin brown skin or outside layer was removed either by acid or friction or some other means; then by artificial means the opaque whitish layer underneath the outer skin was removed by means of a wheel and the inner layer exposed, which presented an inner pearly appearance. They were used for making buttons, handles for penknives and ornaments of various kinds. The Supreme Court affirmed the decision of the Circuit Court, holding that this process or treatment to which the crude article was subjected did not constitute a manufacture of shells within the meaning of the tariff laws.

In the case of the Tide Water Oil Company vs. United States, the court in discussing the word "manufacture"

said that it "is something made by hand, as distinguished from a natural growth; but as machinery has largely supplanted this primitive method, the word is now ordinarily used to denote an article upon the material of which labor has been expended to make the finished product. Originally, the article so manufactured takes a different form, or at least, subserves a different purpose from the original materials; and usually it is given a different name. Raw materials may be, and often are, subjected to successive processes of manufacture, each one of which is complete in itself, but several of which may be required to make the final product."

In the case submitted, the raw material does not even take a different form, nor does it subserve a different purpose after it has been subjected by the warehouse men to the process through which he puts it to get it into merchantable shape, nor is the tobacco given a different name, nor is it ready for the consumer, nor has it become the finished product, but the process to which it is subject may be likened to the process to which hay is subjected before it is fed to live stock. Letters of Messrs. Shepard and Morgan returned herewith.

Very truly yours,

W. H. ELLIS,

Attorney General.

CALCULATION UPON RECEIPTS OF PREMIUMS FROM POLICY HOLDERS.

Tallahassee, Fla., January 22, 1908.

Hon. W. V. Knott,
State Treasurer,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of the 15th requesting my opinion as to the meaning of that portion of Section 8 of Chapter 5597, Acts 1907, requiring insurance companies to pay to the State Treasurer on the first day of January after the passage of the act, and on the first day of each

succeeding January, two per cent of the gross amount of premiums received from policy holders in this State, as applied to a company which was doing business in this State in 1906, and had obtained a permit or certificate on the first day of January, 1907, as required by Chapter 5459, and had paid its license on the first day of October, 1906.

Chapter 5597 was approved June 1, 1907, and went into effect sixty days after the adjournment of the Legislature.

I am of the opinion that the gross receipts of premiums from policy holders should be calculated from the date the act went into effect in 1907 up to the first day of January, 1908, and two per cent. collected upon that amount.

I herewith return the letter of Mr. Archibald and his statement attached.

Yours very truly,
W. H. ELLIS,
Attorney General.

CERTAIN POWERS OF THE STATE BOARD OF HEALTH.

Tallahassee, Fla., January 22, 1908.

Hon. Joseph Y. Porter,
State Health Officer,
Key West, Florida.

Dear Doctor:

I am in receipt of your letters, dated respectively January 8, 9 and 14th. Upon my return after several days' absence I hasten to reply.

Your letter of the 8th instant, relating to the case of leprosy at Jacksonville, requests my opinion as to the authority of the State Board of Health to look after those cases.

On the 27th of July, 1907, I wrote to Hon. E. M. Hendry, President of the State Board of Health, Tampa, Fla., my opinion as to the powers and duties of the State Board of Health of this State, and I think a copy of that opinion was forwarded to you.

On page 10 of that letter I expressed the opinion that the State Board of Health had no authority to acquire real estate, by purchase or gift, for the purpose of establishing a permanent hospital for indigent patients or a sanatorium for tuberculosis patients, but that where contagious or infectious diseases become epidemic, or there is danger of their so becoming, and the isolation of patients suffering from such diseases becomes necessary in the judgment of the health officer, temporary hospitals or pest houses may be established.

There is no doubt but that it would be a wise provision of law if a permanent hospital could be established in this State for tuberculous or leprous patients, and I quite agree with you that the Legislature should make some provision therefor, but I am of the opinion that the State Board of Health of this State is not vested with the power to establish such a hospital.

It is not a question of economy, but it is a question of legislative policy in the matter of dealing with the public health. The powers of the State Board of Health are delegated by the Legislature. The Board can exercise such powers only as are expressly delegated to it or which may be necessarily inferred from that power which has been expressly given; but as stated in my opinion referred to, in view of the great public interest dependent upon boards of health, the powers delegated by the Legislature to such boards have always received from the courts a liberal construction.

Your letter of the 9th relating to the communication of Dr. Baer, requests me to indicate to you what course should be taken by you in the matter referred to in Dr. Baer's letter.

Dr. Baer states that at Bradentown there is an oyster house where the oysters are kept on wooden frames beneath the building from the time they are brought in until they are sold. The house is on the Manatee River, and there are some eight or ten private sewers opening into the river above and below the oyster house. He alleges that the sewage discharged from these sewers is wafted

over the oysters, thus making them a dangerous article of food.

Sections 1121, 1149 and 1153 of the General Statutes provide that the State Health Officer, when he finds upon inspection any act, vocation, building, street, sidewalk, sewerage system, garbage plant or other thing to be a sanitary nuisance, may cause the same to be abated.

I am unable to say that putting oysers upon a frame in a river into which sewage from private sewers passes is a sanitary nuisance. It remains for you, the State Health Officer, in the exercise of your judgment, to say that it is or is not a sanitary nuisance, and if you should determine that it is a sanitary nuisance, the authority is vested in you under the section referred to to cause the same to be abated.

Your letter of the 14th, enclosing a letter from Messrs. George McGhan & Sons, requests that I instruct you as to what answer you should make to the letter of these gentlemen, asking if it would be lawful for them to "install plumbing under the direction of an incompetent plumbing inspector, such as a house carpenter who has never had any practical or theoretical experience in plumbing work."

In my letter to Mr. Hendry, on page 6, I stated that the Board of Health may not by any rule declare in advance that a certain act committed by individuals, municipalities, organizations or incorporations shall be considered a nuisance; that such act can only be declared a nuisance after investigation when it is in fact such, nor can the Board declare in advance that any business or occupation not *per se* injurious to public health is a nuisance; that the Board can only declare such business or occupation a nuisance when it is in fact such; that Section 1153 of the General Statutes is broad enough to enable the Board of Health to declare any act, whether committed under normal conditions or arising under any exigency, a nuisance, if under the circumstances and conditions such fact is in fact a sanitary nuisance; that Section 1155 of the General Statutes provides ample

authority to the State Board of Health for abating such nuisance.

Yours very truly,
W. H. ELLIS,
Attorney General.

APPLICATION OF MRS. IDA HALE FOR PENSION.

Tallahassee, Fla., January 25, 1908.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I have your letter of the 18th instant, upon the subject of the application of Mrs. Ida M. Hale for pension under Chapter 5600, Acts of 1907.

Mrs. Ida M. Hale, the widow of Horace M. Hale, who was a Confederate soldier, applied for pension under Chapter 5600, on July 8, 1907. On October 29, 1907, she was married again to L. W. Mann, and on January 11, 1908, the Board of Pensions, not being aware that she had married again, passed upon her application favorably and sent her a certificate and voucher made out in favor of Mrs. Ida M. Hale.

Mrs. Mann in a letter to the Secretary of the Board of Pensions, states that she had received the voucher for the quarter ending December 31, but had received no voucher for the quarter ending September 30th. Mrs. Mann wishes to know if she should sign the voucher sent her for the quarter ending December 31, or whether you will prepare a voucher for the quarter ending September 30.

Under the provisions of Section 3 of the act, a widow of a deceased soldier or sailor who enlisted and served in the military or naval service of the Confederate States, or of this State, including the home guards and reserves, during the war between the states and of the United States, and did not desert the Confederate or State service, is entitled to receive the sum of one hundred and twenty dollars per annum from the State in quarterly payments, provided such widow was legally married to

the soldier or sailor ten years prior to the filing of the application for pension, and has continually resided in the State ten years previous to making the application.

This act does not provide that when the application is granted to such a widow that she shall cease upon her remarriage to receive a pension, as was expressly provided by Chapter 5109 of the Acts of 1903, Section 1, which act was entitled "An Act to Provide Annuities for Widows of Deceased Confederate Soldiers and Sailors of the State of Florida, and to Create a State Board of Pensions and to Prescribe Their Duties and Powers," which contained a clause that the provisions of the act should not apply to any widow after her remarriage.

Chapter 4894 of the Laws of 1901 contained a similar provision—that is, that such widows should receive pensions during their widowhood.

I think, however, that it was the purpose of the act to extend the benefits thereof to the widows of deceased soldiers and sailors during the period of their widowhood, and that upon their remarriage they should no longer be entitled to the benefits of the act.

Section 10 of the act prescribes the method by which their names may be dropped from the roll, and empowers the State Board of Pensions, under the circumstances prescribed, to drop the names of such pensioners from the list.

Under the provisions of Section 6, Acts 1907, payment of the new claims is required to be made from the date of the filing of the application in the pension office. I would say, therefore, that Mrs. Hale should receive a pension from July 8, 1907, to the 29th day of October, 1907, the date upon which she married her present husband, and that a voucher for that period should be made out and delivered to her, and the attention of the County Commissioners should be called to the case, and that the voucher for the quarter ending December 31st should be withheld.

Yours truly,

W. H. ELLIS,

Attorney General.

PENSIONS.

Tallahassee, Fla., January 24, 1908.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

In reply to yor letter of the 13th instant containing a communication from Hon. H. H. Duncan, Clerk of the Circuit Court for Lake County, I beg to say that the Pension Act of 1907, Chapter 5600, in Section 2 provides that any person who enlisted and served in the military or naval service of the Confederate States or of this State, including the home guards and reserves, during the war between the states of the United States, and did not desert the Confederate or State service, and who was a bona fide citizen of this State and continuously for ten years prior to date and filing of the application for pension, and who was over sixty years of age at the date of application, shall each receive one hundred dollars per annum, in quarterly payments.

The act provides for pensions graded according to the injuries or disability from which the applicant may be suffering.

Chapter 4894, Acts 1901, provided for pensions in favor of any person who enlisted and served in the military or naval service of the Confederate States and did not desert the Confederate or State service, and who was a citizen of the State on the first day of January, 1885, and who had continued to be a citizen of the State, and who sustained certain injuries. Among other changes made by the former act was that "home guards and reserves" shall be included as proposed beneficiaries of the act.

It was evidently the purpose of the Legislature to include within the provisions of the act those persons who, during the war between the states, became members of the organization known as "home guards" or "reserves," and who have since become permanently disabled because of wounds or disease to gain a livelihood by manual labor.

Service in the military or naval arm of the Confederate States, in my opinion, was not made the sole basis of one's right to a pension under that act, but membership in the organization known as the home guards or reserves was made by the provisions of that act the basis of a person's right to a pension as much as actual service in the military or naval arm of the Confederate States or of the State of Florida.

Section 6 of Chapter 5600 prescribes to whom the applications for pensions shall be made, before whom the oath shall be taken and the character of the proof to be submitted. Sectoin 7 of the act prescribes the duty of boards of County Commissioners. Section 10 prescribes further duties of the County Commissioners in the matter of examination of the pension rolls of their respective counties to ascertain who should be dropped from the rolls.

Yours very truly,

W. H. ELLIS,

Attorney General.

LICENSE TAX ON CIGAR MANUFACTURERS.

Tallahassee, Fla., January 24, 1908.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

Replying to your letter of the 13th instant regarding the license tax on cigar manufactories, I beg to say that under Chapter 5597 a tax of ten dollars is levied upon manufactories of cigars having a capital stock of ten thousand dollars and less than twenty thousand dollars; fifteen dollars upon manufactories of cigars having a capital stock of twenty thousand dollars and less than forty thousand; twenty dollars upon cigar manufactories having a capital stock of forty thousand dollars and less than sixty thousand, and a tax of thirty dollars on such manufactories having a capital stock of over sixty thousand dollars.

The law requires the owners, managers or agents of such institutions or establishments to pay the State license designated above, and the amount of the tax is regulated by the capital invested. The law does not require a license to be paid on each building or for each place of business, one license only being required, the amount of which is regulated by the amount of capital invested in the enterprise. There is no tax prescribed to be paid by a manufacturer of cigars having a capital of less than ten thousand dollars.

Yours very truly,
W. H. ELLIS,
Attorney General.

LICENSE TAX ON NATIONAL BANKS.

Tallahassee, Fla., January 24, 1908.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I have your communication relating to the collection by Tax Collectors in this State of a license tax on national banks, requesting my opinion on same.

Section 8 of Chapter 5597 provides for a tax upon banks, bankers, persons, firms or brokers doing a banking business, whether incorporated or not.

In my opinion it was not the purpose of the Legislature to subject the national banks to taxation for the exercise of the privilege of banking. National banks are authorized to pursue their banking business by virtue of the acts of Congress, and as the Legislature had no power to prohibit the exercise of the privilege so conferred by Congress, it could not have been within the contemplation of the Legislature to include national banking among the privileges to be taxed.

The act of Congress, R. S. Sec. 5219, which authorizes the taxation by the State of the shares in national bank-

ing institutions does not authorize the imposition of a privilege tax upon such institutions.

Yours very truly,
W. H. ELLIS,
Attorney General.

PENSIONS.

Tallahassee, Fla., January 27, 1908.

Hon. N. B. Broward,
Governor of Florida,
Tallalhassee, Fla.

Dear Sir:

Your letter of the 22nd instant, asking my opinion as to whether applicants for pensions "who belonged to companies of home guards and reserves of which there is no proof of enlistment or service in the military or naval service of the Confederate States" are entitled to pensions under Chapter 5600 of the Acts of 1907, has been received.

That act, which is the last expression of the Legislature on the subject of pensions, made several material changes from the acts as they theretofore existed, and among the more important changes made by the Legislature of 1907 is that of defining who shall receive pensions.

Theretofore under every act of the Legislature since 1889, except the act of 1901, no person was entitled to receive a pension from the State of Florida unless he enlisted in the military or naval service of the Confederate States or of this State during the war between the States of the United States.

The Act of 1901, Chapter 4894, made enlistment and service in the naval or military service of the Confederate States or of this State the basis of an applicant's right to a pension, the act of 1901 being the first since 1889 which used the word "served" in connection with the word "enlisted."

That act of 1907 adds the words "including home guards and reserves." In my opinion it was the purpose of the Leg-

islature of 1907 to define the classes of persons who should be entitled under certain conditions to receive pensions from the State of Florida.

The first class was those who enlisted and served in the military or naval service of the Confederate States or of the State of Florida, and the second class was the home guards and reserves.

The addition of the word "served" in the act of 1901 to the language of the acts that preceded that act adds very little, if any, force to the acts of 1889, 1893, 1897 and 1899, because when a person has enlisted in the military or naval service, his services in contemplation of law immediately begin—certainly is this true immediately upon his being mustered in.

The process of enlistment is official; certain steps must be taken and certain oaths administered before a person can become enlisted. After he is enlisted and mustered into service it can be said in legal contemplation that he has served in the military or naval service according to the service in which he has enlisted. The term "enlisted," therefore, cannot be applied to home guards or reserves because there was no official enlistment in the service of the home guards or reserves, but those organizations were voluntary unofficial organizations made for the purpose of rendering service to the Confederate cause if their services should be accepted by the Government, or independently of governmental control if necessary.

The character of these organizations must have been known to the Legislature of 1907, and Chapter 5600 should, in my opinion, be interpreted in the light of that knowledge of the unofficial character of such organizations.

It being the purpose of the Legislature to make membership in the home guards and reserves the basis of a person's right to a pension from this State, enlistment or service in the military or naval service of the Confederate States or of this State is immaterial when the application for pension is made by one who was a member of a home guard company or a company of reserves.

Section 6 of the Act prescribes the manner of establishing a pensioner's right to the benefits of the act. The act is very crudely drawn in that the method prescribed for the proof of one's rights to the benefits of the act does not seem to apply to the case of one basing his right to a pension upon membership in the home guards or reserves. For instance: The term "enlisted" in Section 6 would have to be construed to mean enrollment of a person's name in a company of home guards or reserves. The words "Commissioner officer" would have to be construed to mean some officer in the voluntary organization whose position would have to answer to that of commissioned officer, and the requirement that proof could be made by two soldiers with whom the applicant served, must be construed to mean two volunteers, members of the same organization.

Yours very truly,
W. H. ELLIS,
Attorney General.

IN RE CASE OF FLORIDA RAILWAY COMPANY VS. A. C. CROOM, COMPTROLLER ET AL.

Tallahassee, Fla., January 30, 1908.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I am in receipt of a letter from Messrs. Carter and McCollum, solicitors for the Florida Railway Company, enclosing two stipulations in the two Florida Railway Company tax cases (one in each case), agreeing to allow the solicitors for the railway company thirty days from the first day of February, 1908, in which to file amended bills of complaint, and requesting me to sign the same.

It seems that Judge Palmer sustained my demurrers to the bills of complaint in those cases and allowed the railway company until the first day of February in which to

file amended bills. I received no notice, however, either from the court or from the counsel for the complainants save that inferentially contained in the letter referred to above, of the action of the court in sustaining the demurrers.

I write to ask if the extension of time requested by the solicitors for the complainant railway company is satisfactory to you; if so I will consent, otherwise I will decline.

It seems to me that there should be no further delay in these cases.

Yours very truly,
W. H. ELLIS,
Attorney General.

TEN DOLLAR PER MILE TAX ON RAILROADS.

Tallahassee, Fla., January 30, 1908.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

In re "railroad taxes," your file 49, I beg to acknowledge receipt of your communication of the 27th instant, advising me that the railroads in this State had so far failed to remit "their ten-dollar-per-mile license tax under Chapter 5623 Laws of Florida," requesting me to advise you what proceedings to take in the matter.

Section 11 of Chapter 5597 of the Laws of 1907, approved June 1st, 1907, provides that any person or persons, firm or corporation or association that shall carry on or conduct any business or profession for which a license is required by either that or any other act without first obtaining such license, shall, except in such cases as are otherwise provided by law, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than double the amount required for such license.

That section also provides that the payment of the license shall be enforced by the seizure and sale of the property by the collector; or in case of State license taxes payable either to the State Treasurer or Comptroller, by the State Treasurer or Comptroller as the case may be.

Chapter 5623 requires that any railroad company doing business in this State shall pay annually on the first day of October to the Comptroller of the State a sum equal to ten dollars for each and every mile of its railroad tracks in this State, including branches, switches, spurs and side-tracks.

I think that these two acts, being in relation to the subject of imposition of license taxes, both designed for the purpose of raising public revenue, should be construed together; and it is my opinion that Section 11 of Chapter 5597 prescribes the method of procedure that should be taken by you for the collection of all license taxes imposed by Chapter 5623.

I suggest that you write to the presidents or general managers or chief executive officers of the railroads mentioned in the list attached to your communication of the 27th and notify them that if the tax is not paid immediately that you will proceed to seize the property of the railroads to enforce the payment of the tax, and will call the Governor's attention to their delinquency in this regard and ask that he require the State Attorneys of the several judicial circuits to proceed against such railroad companies by information on the criminal side of the court.

Yours very truly,
W. H. ELLIS,
Attorney General.

WITHDRAWAL FROM "PROHIBITION PETITION."

Tallahassee, Fla., February 3, 1908.

Hon. N. B. Broward,
Governor,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your communication of the 31st ultimo, enclosing a letter from Mr. J. A. Erwin, together with a copy of a document signed by W. H. Romedy, in which the signer certifies that he signed a "prohibition petition" for an election "for that purpose in Duval County," that he did so under a misapprehension of its effect; that he has now changed his mind and desires to withdraw his name from the same. The document then formally states that the signer withdraws his name and signature from the said petition calling for a prohibition election, and authorizes the Board of County Commissioners before whom such may be presented to strike his name from the said list as one of the petitioners or applicants.

Mr. Erwin in his letter to you of the 29th ultimo, requests that you obtain a "written opinion" of the Attorney General "to the effect that withdrawals from the petition in the form as shown by the enclosed copy is ineffective or insufficient."

Section 1209 of the General Statutes provides that the Board of County Commissioners of each county whenever a written application asking for an election in the county in which the application is made to decide whether the sale of intoxicating liquors, wines or beer shall be prohibited therein is signed by one-fourth of the registered voters of said county and presented to the Board of County Commissioners at a regular or special meeting thereof, shall order an election in said county not oftener than once every two years to decide whether the sale of intoxicating liquors, wines or beers, shall be prohibited in said county.

The application of one-fourth of the registered voters of the county as evidenced by a petition in writing to which their signatures have been affixed is a necessary prerequisite to the ordering of a local option election by the Board of County Commissioners.

Until the petition is presented it is the property of the signers and each man has control over his own signature and may withdraw it at his pleasure, and it is not necessary for him to assign any good or sufficient reasons for his so doing.

After the petition is presented, however, he may not withdraw his name from the petition without good and sufficient reasons upon which it is within the authority of the Board of County Commissioners to pass. But until the petition is presented it requires no official status; the rights of no person interested have been affected, ad the signers may withdraw their assent up to the time the Commissioners move to make the final order. See the cases of Hayes et al. v. Jones, 27 Ohio State, 218.

This case was cited and approved in the case of Dutton v. Village of Hanover. 42 Ohio State, 215.

In the case of Bordwell v. Dills, 70 Ark. 175, the court held that a person signing a petition for prohibition has the right to have his name erased from such petition at any time before the same is presented to the court.

In the case of McCollough v. Blackwell, 51 Ark. 164. the court said: "The presentation of the petition is in the nature of an election. When the county court has acted, the votes have been cast and the election returns made."

The word "presentation" as used in those decisions should be construed to mean the filing of the petition.

In the Bordwell case the court said: "Before the filing in the court, where petitioners adopt that method of presentation to the judge, the petition is in the power of the signers and each signer may control his signature. It is not yet a petition in which the public is interested."

I herewith return the letter of Mr. J. A. Erwin and the document signed by Mr. Romedy.

Yours very truly,
W. H. ELLIS,
Attorney General.

REGARDING NEEDED SERVICES OF INSPECTOR EMPLOYED BY. R. R. COMMISSION.

Tallahassee, Fla., February 7, 1908.

Hon. R. Hudson Burr,
Chairman Railroad Commissioners,
Tallahassee, Florida.

Dear Sir:

I am in receipt of your letter of yesterday in reply to my letter of October 31, 1907, in which I requested the Railroad Commissioners to have their engineer to inspect the physical condition of the lines of road of the Atlantic Coast Line Railroad Company from Palatka to St. Petersburg, more particularly described in the alternative writ of mandamus, and make notes of the condition of each mile of the roadbed and track, the number of broken fish-plates or angle irons, decayed and useless ties, etc., within each mile of the main line of road, with the view of having said inspector testify as to such condition in order that the case referred to might be carried to a final termination and the interest of the people thereby subserved.

I note that you decline to furnish this service to the people on the ground that the Railroad Commissioners "believe it to be their duty to keep him (the inspector) inspecting defective parts of different roads where it is most urgent."

I beg to call your attention to that portion of my letter above referred to in which I stated that *petitions* from the business men and patrons of the Atlantic Coast Line Railroad Company living along the line from Palatka to St. Petersburg, protesting against the unsafe condition of the

roadbed and track of the Atlantic Coast Line Railroad Company running through the territory described in the alternative writ of mandamus, had been filed in this office.

I also beg to call your attention to the allegations of the alternative writ as the same appear in the case as reported on page 215 of the 44 So. Reporter, paragraph 10, that "the said Atlantic Coast Line Railroad Company has carelessly and negligently, and in violation of its duty to the State and the public, failed and is failing to keep its roadbed and track in good repair and in fit and suitable condition for the proper transportation of freight over its said lines of railroad and the safe movement of its equipment thereon; that it has allowed and is allowing its roadbed and track to run down and become unfit and unsuitable for the proper movement of its equipment thereon and the transportation of freight thereover; that said track in its present condition is a danger and menace to the lives and limbs of the passengers on said railroad; that said roadbed and track of the said lines of railroad contain heavy grades and great curvatures on the main lines; the rails are light and insufficient in size and weight, and a large percentage of the crossties under said rails are rotten and wholly incapable of supporting the rails with the weight of an empty car thereon. At divers places along said lines for great distances the iron spikes which are driven into the crossties to support the rails can be lifted from the crossties with the naked hand; that many of the angle bars or plates on the main line and bolts used in the same, are broken, and that on account of the unsafe, dangerous and bad condition of the track as aforesaid numerous casualties have recently occurred upon said lines of railroad, resulting in the destruction of human life and great waste and damage to the property."

I desire to advise the Railroad Commissioners that I have in my possession on file in this office, petitions as stated in my letter of October 31, 1907, supporting the allegations of the alternative writ as quoted above; besides letters and other communications from citizens com-

plaining of the bad condition of the roadbed and track of the said railroad company.

It occurs to me, therefore, that inasmuch as the services of the public inspector are required to inspect the condition of the roadbeds and track of this railroad company against which complaint has been made by so many citizens of the State of Florida, and upon which litigation was commenced in their behalf by the Attorney General of this State to correct the evils complained of, which litigation is now at a standstill because the evidence of the real physical condition of the roadbed and track of the said railroad company along the lines mentioned is required by the Supreme Court, before whom said litigation is now pending, that the demand for the services of the inspector is most urgent and the circumstances are such that require immediate attention.

I beg to call your attention to the fact that no appropriation was made by the Legislature over which the Attorney General has control to enable him to procure the evidence which is so much needed in this particular case, but that provision was made by the Legislature of 1907, Chapter 5622, for the inspection of the physical condition of the roadbeds, rights-of-way, tracks., etc., of any railroad or railroads being operated wholly or in part in this State, and authority was given to the Railroad Commissioners to employ a competent inspector to perform this work.

I made the request as contained in my letter of October, 31, 1907, as Attorney General of this State in the interest and on behalf of the people of this State, whose public servant I have the honor to be; the request was made of the Railroad Commissioners, who are also in the public service, for the services of the public inspector employed under the provisions of Chapter 5622 aforesaid.

I regret that you have declined to render this service to the people of this State, and on behalf of the people of the Counties of Putnam, Alachua, Marion, Citrus, Lake, Sumter, Hernando, Pasco, Hillsborough, Polk, Manatee, DeSoto, and others, whose interests are affected

by the service required of the Atlantic Coast Line Railroad in this State, I urge you to reconsider your determination, and cause the "inspector" to inspect the physical condition of the roadbeds, rights-of-way and tracks of the Atlantic Coast Line Railroad Company running through the territory described in the alternative writ of mandamus in the case of State *ex rel.* W. H. Ellis, Attorney General, v. Atlantic Coast Line Railroad Company, reported in 44 So. Reporter, page 213, and to make immediate report to you, and that you furnish me with a copy of such report in order that I may, as the public servant of the people of this State, compel the Atlantic Coast Line Railroad Company to perform its duty to the people in the matter of putting its roadbeds and tracks in a safe and suitable condition.

This service of the public inspector, employed by the Railroad Commissioners of this State under the provisions of Chapter 5622, Laws of 1907, I demand in the name and on behalf of the people of this State to the end that the said railroad company may be compelled to perform its full duty to the people as prayed for in the alternative writ of mandamus in the case above mentioned.

Yours very truly,

W. H. ELLIS,

Attorney General.

CONSTITUTIONAL PROVISION REGARDING PROCEEDS OF THE SALE OF TWENTY-FIVE PER CENT OF PUBLIC LANDS.

Tallahassee, Fla., February 5, 1908.

Hon. N. B. Broward,
Governor,
Tallahassee, Fla.

Dear Sir:

Your letter of recent date requesting my opinion as to whether Section 4 of Article VIII of the Constitution, which provides among other things that "The Common

school fund * * * shall be derived from the following sources: * * * Among others, 25 per cent. of the sales of public lands which are now or may hereafter be owned by the State," is of full force and effect and is applicable to the lands in the hands of the Trustees of the Internal Improvement Fund of the State of Florida, and if so, from what date and to what sales of said public lands is the State School Board entitled to an accounting and recovery.

The section and article of the Constitution of Florida of 1885, relating to the State School Fund, is Section 4, Article XII, and its provisions are as follows:

"The State School Fund, the interest of which shall be exclusively applied to the support and maintenance of public free schools, shall be derived from the following sources:

"The proceeds of all lands that have been or may hereafter be granted to the State by the United States for public school purposes.

"Donations to the State when the purpose is not specified.

"Appropriations by the State.

"The proceeds of escheated property or forfeitures.

"Twenty-five per cent of the sales of public lands which are now or may hereafter be owned by the State."

Section 5 of the same article provides that:

"The principal of the State School Fund shall remain sacred and inviolate."

The Constitution of 1868 contained the following section:

Section 4 of Article VIII:

"The Common School Fund, the interest of which shall be exclusively applied to the support and maintenance of common schools, and purchase of suitable libraries and apparatus therefor, shall be derived from the following sources: The proceeds of all lands that have been or may hereafter be granted to the State by the United States for educational purposes; donations by individuals for educational purposes; appropriations by the State;

the proceeds of lands or other property which may accrue to the State by escheat or forfeiture; the proceeds of all property granted to the State, when the purpose of such grant shall not be specified; all moneys which may be paid as an exemption from military duty; all fines collected under the penal laws of this State; such portion of the per capita tax as may be prescribed by law for educational purposes; twenty-five per centum of the sales of public lands which are now or may hereafter be owned by the State."

Section 6 of the same article provides that:

"The principal of the Common School Fund shall remain sacred and inviolate."

Under the Constitution of 1868 the school fund was called the "Common School Fund," but under the Constitution of 1885 it was denominated the "State School Fund." Both constitutions provided for the ample and liberal maintenance of public free schools and created a fund, the interest upon which should be applied exclusively to the support and maintenance of such schools, and provided that the principal of such fund should remain sacred and inviolate. Both constitutions provided that the school fund should consist in part of twenty-five per cent. of the sales of public lands owned by the State.

The term "public lands" as used in the Constitutions of 1868 and 1885, designated a class of lands distinguished from those granted by the United States to the State of Florida for public school purposes, all the proceeds of the sales of such lands constituting part of the school fund, while only twenty-five per cent. of the proceeds of the sales of "public lands" owned by the State, or thereafter acquired, was to be paid into the school fund.

The public lands of which the State became the owner consisted (among others) of the sixteenth section in every township, granted by Act of Congress of March 3rd, 1845, for school purposes; five hundred thousand acres granted by act of Congress of September 4th, 1841, (made applicable to Florida by act of March 3rd, 1845,) for internal

improvements, and the swamp and overflowed lands granted by act of September 28th, 1850.

The term "public lands" is defined to be such lands as are subject to sale or disposition by the government under general lands. Newall vs. Sawyer, 92 U. S. 761.

By Chapter 610, Laws of Florida, approved January 6th, 1855, entitled "An Act to Provide for and Encourage a Liberal System of Internal Improvements in this State," the Legislature set apart and declared as a distinct and separate fund, to be called the "Internal Improvement Fund of the State of Florida," and to be strictly applied according to the provision of the act, so much of the five hundred thousand acres of land granted to the State for internal improvement purposes as remained unsold, and the proceeds of the sales of such lands theretofore sold as remained on hand and unappropriated, and all proceeds that might thereafter accrue from the sales of such lands, and all the swamp lands subject to overflow granted to the State by the act of Congress approved September 28th, 1850, together with all the proceeds that had accrued or might thereafter accrue to the State from the sale of said lands.

For the purpose of assuring a proper application of the fund to the purposes of the act, the said lands and all the funds arising from the sale thereof, after paying the necessary expenses of selections, management and sale, were "irrevocably vested" in five trustees, all of whom were officers of the State government, and their successors in office, to hold the same in trust for the uses and purposes in the act provided. The trustees were vested with the power to sell and transfer the lands to purchasers and to receive payment for the same, and to invest the surplus moneys arising therefrom according to the provisions of the act.

The act outlined a system of internal improvements, and pledged the fund to pay the interest as it might become due on the bonds issued by any railroad company under its provisions. By the provisions of Section 15 of the act, the State granted to each of the different com-

panies that should construct portions of the lines of railroad on the routes indicated, the alternate sections of State lands on each side for six miles; and by the provisions of Section 16 the trustees were empowered to fix the price of the "public lands" included in the trust, and make such arrangements for the drainage of the swamp or overflowed lands as in their judgment was deemed most advantageous to the fund and the settlement and cultivation of the lands.

It was not the purpose of the Legislature to apply the magnificent estate composed of the swamp lands acquired under the act of Congress of September 28th, 1850, and the five hundred thousand acres acquired by the act of March 3rd, 1845, in its entirety to the building of railroads by the companies that might be organized for the purpose of building the lines of road along the routes indicated, nor did the Legislature contemplate that the fund would be exhausted by extending the aid contemplated.

Trustees I. I. Fund vs. Bailey, 10 Fla. 125.

Ample provision was made for the protection of the fund and the preservation of the same intact for the general welfare of the State, and the devotion of the swamp lands to the purposes for which they were granted by the United States. The purpose of the act was to create a fund to encourage and promote internal improvements by extending aid to railroad and canal companies in the building of certain lines of railroads and a canal; the reclamation of the swamp lands and the settlement and cultivation of the same.

The title of the act declares that it was for the purpose of encouraging a liberal system of internal improvements in the State.

The State of Florida did not part with the beneficial estate and interest in this great estate by vesting the legal titles to the lands in certain State officers and their successors, nor did it part with its right to dispose of that estate by charging those officers with the duties mentioned in the act, nor did the State divest itself of aught but the naked legal title to the lands mentioned. The beneficial

interest and estate therein was retained by the State as owner, the act of 1855, Chapter 610, being merely a legislative regulation of the holding, management and sale of the lands therein mentioned. The title held by the trustees is of a public character, so that their deed is prima facie evidence of title in the grantee.

Groover et al. vs. Coffee, 19 Fla., 73 text.

The lands designated in the act of 1855, Chapter 610, did not lose their character as public lands by being pledged in trust to aid in the construction of certain objects of improvement. The Legislature by that act simply designated some objects of improvement to be constructed first and to postpone others.

The powers of subsequent Legislatures were not limited by the exercise of the powers of the Legislature of 1855, unless the act of the latter was of such character as called into operation a constitutional limitation, and something more than a simple antecedent exercise of legislative power stood in the way of the exercise of the powers of the subsequent one. The internal improvement law is not organic law, and the power of one legislature is no greater than another.

Gonzales vs. Sullivan, 16 Fla., 819 text.

The Supreme Court of the United States has held in several cases that the swamp lands granted to the states by the act of Congress of September 28, 1850, are subject to the disposal of the legislatures of the states respectively in such manner as they may deem expedient, without any right on the part of any person except the government of the United States to question such disposal. The application of the proceeds of those lands to the purposes of the grant rests upon the good faith of the State—it is a matter between two sovereign powers. Although it is specially provided that the proceeds of such lands shall be applied "as far as necessary" to their reclamation by means of levees and drains, it is not a trust following the lands.

Mills Co. vs. B. & M. Railroad, 107 U. S. 565; Cook Co. vs. Calumet, etc., Canal Co., 138 U. S. 655; U. S. vs.

Louisiana, 127 U. S. 187; American Emigrant Co. vs. Co. of Adams, 100 U. S. 69; Hagar vs. Reclamation Dist., 111 U. S. 701.

The dictum of the Supreme Court of Florida on this point, as expressed in the case of Trustees of the Internal Improvement Fund vs. St. John Railway Co., 16 Fla. 531, therefore, appears not to be concurred in by the Supreme Court of the United States.

Section 4 of Article VIII of the Constitution of 1868, which was carried into and became a part of the Constitution of 1885, so far as it provided that the Common or State School Fund should consist in part of twenty-five per cent. of the sales of public lands which were then owned or thereafter acquired by the State, operated as an amendment to Chapter 610, in which a portion of the sales of the lands designated in that statute was diverted to other purposes than those specified in the act, and constitutes an obligation or debt upon the fund. It is more than an amendment—it is a limitation or inhibition upon the Legislature from diverting more than seventy-five per cent. of the sales of the public lands designated in the act to purposes other than increasing the Common or State School Fund.

Section 4, Article VIII of the Constitution of 1868 was not applicable to the sales of the lands in the funds which were sold for the purpose of discharging the lien of the bondholders of the railroads which acquired the right to the provisions of the act prior to 1868.

The constitutional provision could not of course have the effect of impairing the obligations of contracts not depriving third persons of vested rights acquired under the act of 1855.

In my opinion, the provisions of the Constitution of 1868, as well as that of 1885, is self-executing; it is a present application of public money arising from the sale of public lands; the Treasurer was the custodian of all funds, and was, therefore, the custodian of the Common School fund. The Superintendent of Public Instruction, under the Constitution of 1868, had the "administrative supervision" of all matters pertaining to public instruction,

and the provision of the constitution referred to as applying twenty-five per cent. of the sales of public lands to the Common School Fund was a direction to the trustees to so apply such portion of the sales.

The Constitution of 1885 makes no material change, except vesting a "State Board of Education of Florida" with the power and duty of managing and investing all State school funds. The State Board of Education, therefore, has the right to demand an accounting from the Trustees of the Internal Improvement Fund of the State of Florida for twenty-five per cent. of the proceeds of the sales of all lands contained in the Internal Improvement Fund, from February 25th, 1868, (or that have since been acquired and placed into said fund,) to date, excluding only such sales as were made for the purpose of discharging a lien upon the fund held by the bondholders of the railroads which had acquired the rights under the act of 1855, and such liens as may have been acquired prior to February 25th, 1868.

Very respectfully,

W. H. ELLIS,

Attorney General.

TAX ON INSURANCE RATE-MAKER.

Tallahassee, Fla., February 19, 1908.

Hon. W. V. Knott,
State Treasurer,
Tallahassee, Fla.

Dear Sir:

Section 8, Chapter 5597, Acts of 1907, page 50, imposes a license tax of twenty-five dollars upon each insurance rate-maker or rate agent traveling in this State who makes, fixes or recommends the fixing or adjustment of rates in this State for each insurance company represented by him whose rates are effected by his services.

I should say that an agent who makes suggestions or recommendations, as indicated by Mr. Groover in his let-

ter of the 22nd of January, is an insurance rate-maker or rate agent who fixes or recommends the fixing or adjustment of rates as contemplated by the act. I herewith return Mr. Groover's letter addressed to you.

Yours very truly,

W. H. ELLIS,

Attorney General.

SUB-LEASING OF LEON COUNTY CONVICTS.

Tallahassee, Fla., February 24, 1908.

Hon. N. B. Broward,

Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of recent date inclosing copy of report of Mr. Fitzgerald upon Leon County prisoners.

I note from the copy of Mr. Fitzgerald's report and your letter that Leon County prisoners are leased by the County Commissioners to a contractor, who claims the privilege under his lease to sublet the prisoners, and that in consequence of this practice a prisoner sentenced to the county jail is allowed to go at will and is practically at liberty notwithstanding his sentence has not expired. You request me to advise you upon the law regulating the management of county convicts.

A convict is one who has been convicted of a felony or misdemeanor. The violation of a law which society has ordained for the preservation of the public safety and order and the tranquility of the State, which is punishable through a judicial proceeding in the name of the State, is a crime; a felony or a misdemeanor, and crimes are punishable by fine or imprisonment.

The State inflicts punishment for crime as a precaution against future offenses. Blackstone says that the object sought is effected in three ways: by the amendment of the offender himself; by deterring others through his example, and by depriving the guilty party of the power to do

future mischief. The infliction by the State of punishment for crime is therefore salutary in its effect and is the means by which the State protects and preserves its peace and tranquility to the ultimate good of all members of society.

Involuntary servitude as a punishment for crime is not prohibited by the Constitution of this State. A statute which prescribes confinement in the county jail as a punishment for a crime must be read in connection with Section 4010, General Statutes, and Chapter 5705 Laws of Florida, 1907, which add to the penalty of confinement the feature of involuntary servitude at the discretion of the County Commissioners. Holland v. State, 23 Fla. 123.

The feature of involuntary servitude, hard labor, attaches to a judgment of conviction and sentence to imprisonment in the county jail, by operation of law, and is as valid and as much the purpose and object of the law as if it were expressly written into the sentence. Confinement, restraint of liberty by confinement in the county jail, *and* hard labor, involuntary servitude, are the two essential features contained in the punishment which the law prescribes for crime, when such punishment is fixed at imprisonment in the county jail. The character of such punishment is the result of the fixed and settled policy of the Government in its effort to preserve and protect the peace of society and the tranquility of the State.

In the enactment of Chapter 2090, Laws of 1877, Section 4109, General Statutes, and Chapter 5705 Laws of 1907, the legislative purpose was not to contravene the general policy of the Government in prescribing punishment for crime, but rather to aid and foster such policy and at the same time to recoupe for the county from the value of the convict's labor somewhat of the costs and expenses incurred in his prosecution and conviction of crime.

It was not the purpose of the Legislature to vest in the Boards of County Commissioners of the different counties the power to increase or diminish by one jot or tittle the punishment prescribed by law and following upon the

judgment of the court in cases where one is convicted of crime and sentenced to imprisonment in the county jail as punishment. If such had been the purpose of the Legislature, and by the acts referred to any such power had been attempted to be lodged in the County Commissioners, the attempt would have failed and the acts would have been void as being in contravention of Section 12, Article IV of the Constitution, vesting in the Board of Pardons the power to remit fines, commute punishments and grant pardons after conviction.

Chapter 5705 ought not to receive such interpretation as would render its provisions invalid as being in violation of the Constitution, but if possible it should receive such interpretation as will sustain and preserve its validity. The discretion, therefore, vested by Chapter 5705, Laws of 1907, in the Boards of County Commissioners, to hire out all prisoners imprisoned in the jails of their respective counties under sentence upon conviction for crime, or for failure to pay fine and costs imposed upon conviction for crime, "upon such terms and conditions as they may think advisable," does not authorize the County Commissioners, by contract or otherwise, to alter or change the character of the convict's punishment from that which the law imposes when he is sentenced to imprisonment in the county jail for crime, which is confinement, restraint of liberty *and* subjection to labor. The power to prescribe "such terms and conditions" as the Boards of County Commissioners "may think advisable" relates to the contract of hiring merely, and cannot be exercised in such way as to affect the convict's status as one restrained of his liberty and subject to involuntary servitude.

The word "escape," says Mr. Bishop, has two separate meanings in the law. The one is the allowing, voluntarily or negligently, of a prisoner lawfully in custody to leave his confinement. The other is the going away, by the prisoner himself, from his place of lawful custody, without a breaking of prison. 2 Bishop's Criminal Law, Sec. 1065.

The escape of a person arrested under criminal process, whether with or without force, before he is discharged by *due course of law,* is punishable as an offense against public justice. 2 Bishop's Criminal Law, Sec. 1093. Sections 3509-3510, General Statutes.

A person who has entered into a contract with the County Commissioners for the labor of the convicts sentenced to jail as a punishment for crime, and has received such convicts into his custody, stands in the position of jailer, and if he voluntarily permits a convict to leave his confinement, such contractor is guilty of a violation of law and is subject to punishment therefor.

The convict who leaves his confinement before his term of sentence expires, upon any pretext whatever, without having obtained a pardon from the Board of Pardons, or his sentence suspended by process of law, is an escape and may be immediately arrested and confined, and kept in confinement until his sentence expires. During the time that he has been at liberty—that is to say, not in actual confinement, his sentence was not running, and in estimating when his sentence will expire such time should not be included, because nothing satisfies the sentence of the law but actual confinement and service. State v. Horne, 52 Fla. 125.

Under the Constitution, Section 6, Article IV, the Governor is required to "take care that the laws be faithfully executed." If, therefore, it has come to your knowledge that a person who was sentenced to imprisonment in the county jail of Leon County by a court of competent jurisdiction, as a punishment for crime, has not served such sentence by being actually confined, restrained of his liberty and subjected to involuntary servitude, but during the time that such sentence should have been running such convict was in fact not in actual confinement, but at liberty to go and come whenever and wherever he pleased, I am of the opinion that it would be your Excellency's duty to order the Sheriff of Leon County to immediately arrest such convict and confine him in the

county jail to await the expiration of his sentence, and that the conduct of the contractor in permitting such convict to go at liberty should be called to the attention of the prosecuting attorney of this judicial district with directions to take such criminal proceedings against him as the case may seem to warrant.

Very respectfully,

W. H. ELLIS,

Attorney General.

APPLICATION OF TWENTY-FIVE PER CENT. OF THE SALE OF PUBLIC LANDS TO THE SCHOOL FUND.

Hon. N. B. Broward,
Pres. Trustees I. I. Fund,
Tallahassee, Florida.

Dear Sir:

In order that the question which for the past three days has engaged the attention of the Trustees of the Internal Improvement Fund, relating to the application by the Trustees of twenty-five per cent. of the sales of public lands to the school fund, may be settled, so far as I am concerned, and my attitude thereon thoroughly explained, and that there may be no misunderstanding between my fellow trustees and myself, I beg to submit the following for their consideration:

On February 5, 1908, in reply to a letter written to me by you, requesting my opinion as to whether Section 4 of Article VIII of the Constitution of 1868, which provides among other things that the Common School Fund should be derived in part from twenty-five per cent. of the sales of public lands which are now or may hereafter be owned by the State, is of full force and effect, and applicable to the lands in the hands of the Trustees of the Internal Improvement Fund of Florida, I wrote you at length my views upon the constitutional provision referred to in your letter above mentioned, as well as the

clause contained in the Constitution of 1885 relating to the same subject.

In that communication I expressed the opinion that the swamp and overflowed lands which were acquired by the State under act of Congress of September, 1850, as well as the five hundred thousand acres granted by act of Congress to the State of Florida for internal improvements, were, within the meaning of the constitutional provision, public lands owned by the State; that the lands designated in the act of 1855, Chapter 610, Laws of Florida, which created the Trustees of the Internal Improvement Fund and vested the legal title to the lands in such trustees for the purpose specified in the act, did not lose their character as public lands by reason of their having been pledged in trust to aid in the construction of the objects of improvement in the act specified; that the act of 1855 was not organic law, and that it was subject to amendment so far as such amendments did not destroy the obligations of any contracts or interfere with any vested rights acquired by other persons under the act of 1855, and that the constitutional provision referred to was a limitation or inhibition upon the Legislature from diverting more than seventy-five per cent. of the sales of public lands designated in the act to purposes other than increasing the Common or State School Fund; that the provisions of the Constitutions of 1868 and 1885 referred to were self-executing, and amounted to a present application of public moneys arising from the sale of all public lands, and was in effect a direction to the trustees to so apply such portion of the sales.

Holding to these views, and believing that immediately upon the sale by the trustees of any public lands, twenty-five per cent. of the proceeds of such sales becomes property of the school fund, and as the Constitution requires that the principal of such school fund shall remain sacred and inviolate, I am constrained to take the position that it would be in violation of the Constitution, and, therefore, wrong, for the trustees to use any portion of the twenty-five per cent. of the sales of public lands for any purpose whatsoever other than the payment thereof

into the hands of the State Treasurer, who, under both constitutions, is the custodian of the Common School Fund.

In accordance with these views, and believing that it was the duty of the trustees to set apart immediately to the school fund twenty-five per cent. of the sales of public lands, and provide that hereafter such portion of all sales should be immediately applied to the school fund, and that an accounting should be had of the sales of all public lands since 1868 down to date, I offered the resolutions which are now under consideration by the trustees.

Those resolutions, you are aware, are in strict accordance with the views expressed in my opinion to you. They provide that the Trustees shall make up and state an account of the sales of all public lands since February 25th, 1868, to January 1, 1901, and estimate thereon the amount due to the State School Fund, and that an accounting should be taken by the Trustees for the period beginning January 1, 1901, down to January 1, 1908, and that two accounts should be opened with the State Board of Education, one of which accounts should be credited with the amount appearing to be due in the accounting covering the first period, and one account should be credited with the amount appearing to be due in the accounting covering the second period, and that the second account should be credited with twenty-five per cent. of all sales subsequent to January 1, 1908, and that monthly settlements should be made of the latter account, and that provision should be made for the immediate payment of that account, and that the amount appearing to be due in the first accounting should be satisfied and discharged by the Trustees as soon as practicable without injury to or impairment of the fund or the facilities of the Trustees for managing the fund to the best interests thereof.

The resolutions further provided that a start should be made immediately toward the performance of what I conceived to be the duty of the Trustees under the Constitution of 1885, and to that end the sum of fifty thousand dollars should be immediately applied by the Trustees to the school fund. In a discussion of that feature of the

resolutions I came to the conclusion that the amount required was in excess of the proportion of the amount on hand upon the date of my opinion which belonged to the school fund, so that I consented to the amendment of the resolutions by striking out the sum "fifty thousand dollars" and inserting in lieu thereof the sum of "twenty-five thousand dollars."

From a statement this day made to me by the Secretary of the Trustees I am advised that on February 5th, 1908, the Trustees had on hand the sum of $125,732.16. This amount we, as Trustees, know was derived from the sales of public lands, and under the Constitution of 1885 twenty-five per cent. thereof is State School Fund property.

I am clearly of the opinion that the ownership of this percentage by the State for the State School Fund does not depend upon any action of the Trustees in the matter of transmitting such percentage to the custodian of all public funds, but that it is as much the property of the State School Fund in the hands of the Trustees as it would be the property of the State School Fund in the hands of the State Treasurer; that it is the duty of the Trustees under the Constitution of 1885, to transmit the percentage of said amount to the Treasurer of the State of Florida, to be credited to the account of the State School Fund, because the Treasurer of the State of Florida, under the Constitution, is the rightful custodian of such moneys, and that the Trustees have no right nor authority to use any portion of this twenty-five per cent. which belongs to the State School Fund for any purpose whatsoever other than to pay the same into the hands of the State Treasurer for the State School Fund.

I submit, therefore, that it is the duty of the Trustees to pay into the hands of the State Treasurer twenty-five per cent. of the amount which was in the hands of the Trustees on February 5, 1908, the same being the date of my opinion referred to, with directions that the same shall be credited to the account of the principal of the State School Fund, and that twenty-five per cent. of the

sales of all public lands made by the Trustees since February 5, 1908, to date, shall be immediately converted into the State Treasury for the use of the State School Fund, and that immediately upon such sales being made hereafter twenty-five per cent. of the proceeds thereof shall be paid into the State Treasury to the credit of the principal of the State School Fund. This I conceive to be my duty as a Trustee, and I cannot yield this position. Holding to this view, therefore, I cannot consent to affix my signature to any warrant drawn by the Trustees against this fund for any purpose whatsoever, until the share owned by the State for the use of the State School Fund has been segregated from the whole amount which was on hand February 5, 1908, and actually paid to the State Treasurer for the use of the State School Fund, or held by the Trustees as the property of the State School Fund, sacred and inviolate, to be applied as a credit upon the accounting to be made immediately by the Trustees of the sales of public lands for the period from January 1, 1901, to February 5, 1908.

Yours very truly,

W. H. ELLIS,

Attorney General.

SIGNING OF CERTAIN WARRANTS BY ATTORNEY GENERAL.

Inasmuch as it has been agreed by the Trustees of the Internal Improvement Fund of Florida that the State owns for the State School Fund twenty-five per cent. of the amount of money in the hands of the Trustees on February 5, 1908, and that said amount has been set apart by the Trustees as the property of the State School Fund, to be applied as a credit upon the amount shown to be due by the Trustees of the State School Fund in the accounting covering the period from January 1, 1901, to February 5, 1908; and as the following number of warrants, to-wit: Numbers 1044 to 1062, inclusive, and numbers 1070 and

1071, aggregating $6,914.93, are issued in payment for labor performed and materials furnished prior to February 5, 1908, in drainage operations, and the payment of said warrants will not impair the share of the State School Fund in the amount in the hands of the Trustees on February 5, 1908, based upon twenty-five per cent. of the sales of public lands, I have affixed my signature to said warrants, but hereby notify all persons concerned that I will sign no warrant for any purpose whatsoever, the payment of which may encroach upon money of the State School Fund in the hands of the Trustees of the Internal Improvement Fund of Florida.

W. H. ELLIS,
Attorney General.

Tallahassee, Florida,
February 29, 1908.

SIGNING OF CERTAIN WARRANTS BY ATTORNEY GENERAL.

Tallahassee, Fla., March 6, 1908.

Gov. N. B. Broward,
President of the Trustees of the
Internal Improvement Fund of Florida.

Dear Sir:

I am affixing my signature to warrants numbered from 1072 to 1079, inclusive, aggregating $1,485.00, with the same understanding with reference to the ownership by the school fund of twenty-five per cent. of the moneys in the Internal Improvement Fund on February 5, 1908, as expressed in my written statement to the Trustees, dated February 29, 1908, and my letter to you of that date, both of which documents were read to the Trustees.

Yours very truly,
W. H. ELLIS,
Attorney General.

PROCEDURE IN CASES OF SUPPOSED INSANITY.

Tallahassee, Fla., March 7, 1908.

Gov. N. B. Broward,
Tallahassee, Fla.

Dear Sir:

The inquiry of Mr. M. J. Burke of Atlanta, Georgia, as to the authority of the Superintendent of the Hospital for the Insane to receive Captain Thomas P. Burke into the hospital has been laid before me that I may advise you in the premises.

It seems that Captain Thomas P. Burke was at one time a citizen of the State of Florida and that he operated a vessel between St. Augustine and Matanzas; that last year he went to the Isthmus of Panama to work for the Government, and is now suffering from paranoia and is in the asylum on the Isthmus of Panama.

The statutes of the State of Florida direct the procedure which is to be taken in cases of supposed insanity. Section 1200 of the Revised Statutes provides that when a resident of this State is supposed to be insane, a petition signed by five reputable citizens—not more than one of whom shall be a relative of the supposedly insane person—setting forth that such person is personally known to the petitioners and that their knowledge of his or her mental condition is sufficient to justify the belief that such person is insane, and asking that an examination be instituted and made as provided by law, may be presented to the County Judge or Judge of the Circuit Court having jurisdiction.

Section 1201 of the General Statutes prescribes the duty of the judge and of the examining committee. Section 1202 of the General Statutes provides for the report, and Section 1203 of the General Statutes provides that the Sheriff shall deliver the person to the custody of the Superintendent of the Florida Hospital for the insane when it is adjudged that such person is insane.

Section 1196 of the General Statutes provides that it shall be lawful for the Superintendent of the Hospital,

when directed by the Board of Commissioners of State Institutions, to receive into the asylum any lunatic or insane person whose friends, parents or guardians are able and willing to pay for the care, custody and maintenance of the lunatic or insane person. In such cases the Board of Commissioners are required to prescribe what amount shall be paid by the friends, etc., of such insane person, and the amount is required by law to be paid quarterly to the Treasurer of the State of Florida.

Whenever the Board *deems* it expedient to do so in such cases *they* may require good and sufficient bond conditioned upon the payment of the charges for the support and maintenance of such persons.

I should say that the insanity of Mr. Burke is established, as well as the fact that he is a citizen of the State of Florida; it would be within the power of the Board of Commissioners of State Institutions under Section 1196 of the General Statutes to direct the Superintendent of the hospital to receive him into the hospital after the Board has been satisfied of the ability and willingness of the friends of Mr. Burke to pay for his maintenance and care. If this course is not pursued, I know of no other means by which he can be placed in the asylum except upon a judicial determination of his insanity.

Yours very truly,

W. H. ELLIS,

Attorney General.

PRINTING FOR MILITARY DEPARTMENT.

Tallahassee, Fla., April 2, 1908.

Hon. J. C. R. Foster,
Adjutant General, F. S. T.,
Tallahassee, Fla.

Sir:

Your letter of recent date requesting my opinion upon the question whether the printing for the military department of the State of Florida should be paid for from the

appropriation for general printing and advertising is before me.

On October 16, 1905, I rendered an opinion to Hon. N. B. Broward, Governor, upon the same question. In that letter I expressed the view that while general printing and advertising was an item which applied to every department, where it is not otherwise provided, expenses on account of printing and advertising should be charged to that appropriation.

The general appropriation act of 1905 contained an appropriation for expenses of State Troops. I expressed the opinion that as printing and advertising was a necessary item of expense, that that item was specially provided for in the act of 1905 making an appropriation for expenses of State Troops.

Since the expression of that opinion the General Statutes of the State of Florida which went into effect December 1, 1906, provide as follows:

"Section 735. * * * The Adjutant General shall be provided with such accommodations as are furnished administrative and other State officers, and the printing of such forms, blanks and stationery as may be necessary for the proper conduct and administration of his office shall be provided for as other general public printing."

This language, which was not included in Chapter 5202 of the act of 1903, was inserted by the Commissioners who were appointed under Chapter 5267, and it was done for the evident purpose of providing specially for the forms, blanks and stationery to be used in the military department to be paid for out of the fund for general printing and advertising.

I am of the opinion that the general appropriations act of 1907 does not alter the policy as expressed in Section 735 of the General Statutes.

Very truly yours,

W. H. ELLIS,

Attorney General.

CONVERSION OF STATE BANK INTO A NATIONAL BANK.

Tallahassee, Fla., April 3, 1908.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of recent date enclosing letter of Mr. J. S. Reese, President of the Peoples' National Bank of Pensacola, and a copy of your letter to him in relation to the conversion of the Peoples' Bank of Pensacola into a national bank, and in reply I beg to say that I think the letter of Mr. Reese correctly states the law.

When a State bank is converted into a national banking association no authority other than that conferred by Congress is required for such conversion. The effect is more of a "transition" than a new creation. All of the old bank's rights of action and all of its liabilities still exist; consequently the new bank can sue to recover loans and is liable for debts and other obligations contracted by its predecessor.

When a state bank is converted into a national bank under the national banking law it is unnecessary to liquidate the state bank, and therefore Section 2726 of the General Statutes does not apply.

I herewith return the letter of Mr. Reese.

Yours very truly,
W. H. ELLIS,
Attorney General.

INSURANCE.

Tallahassee, Fla., May 21, 1908.

Hon. W. V. Knott,
State Treasurer,
Tallahassee, Fla.

Dear Sir:

Your letter of April 9th in relation to the suit of the Pe-

ninsula Industrial Insurance Company of Jacksonville, Florida, and containing other information as to the failure of certain other sick and funeral benefit insurance companies in this State to pay the license tax which you state is imposed by the provisions of Chapter 5597, Acts 1907, has been received.

In a consultation with Hon. A. C. Croom, Comptroller, at which you were present, held immediately after the decision of Judge Malone upon the application of the Peninsula Industrial Insurance Company of Jacksonville, for a mandamus to compel the issuing by the Board of Insurance Commissioners to the said insurance company of a certificate of authority to do business, it was decided by us that the return which we would make to the alternative writ of mandamus should be set out in compliance with the demands of the Peninsula Industrial Insurance Company in so far as the issuing of the certificate of authority was concerned, and that Mr. Croom would cause suits to be instituted in Jacksonville against the Peninsula Industrial Insurance Company and other insurance companies having their principal place of business in that city to collect the tax provided for by Chapter 5597.

I am not advised by Mr. Croom of any steps taken by him so far in the matter of the collection of such taxes, but I presume that he will undertake the collection of same at an early date.

My understanding was that Mr. Croom would employ counsel in Jacksonville to bring the suits because the expense would be less than the payment of my actual traveling expenses to and from Jacksonville. An appropriation has been made by the Legislature and placed at the disposal of the Comptroller for the collection of revenue.

Yours very truly,

W. H. ELLIS,

Attorney General.

PROPOSED SALE OF CERTAIN LANDS.

Tallahassee, Fla., May 30, 1908.

Hon. N. B. Broward,
Governor,
Tallahassee, Fla.

Dear Sir:

I am in receipt of a copy of a letter written by Hon. W. S. Jennings on May 27, 1908, addressed to the Trustees of the Internal Improvement Fund, concerning a proposed sale of about thirty thousand acres of land near Dania to R. P. Davie and J. R. McKinnie by the Trustees.

Mr. Jennings states that he furnished a report upon the proposed sale to the Trustees about 22nd of April, 1908. I have not seen the report referred to by Mr. Jennings, nor have I had an opportunity to examine the terms upon which the sale is proposed to be made nor the price of the land which the Trustees expect to receive. I will take the matter up at once, however, and examine the report and notify the Trustees immediately of my decision in the matter.

I am of the opinion that before any lands should be sold by the Trustees in the drainage district, that as much publicity as possible should be given by the Trustees to the proposed sale so that people residing in the State may have an opportunity of bidding thereon and at the same time afford the Trustees an opportunity of obtaining for the lands the best price which they may bring.

It is also my opinion that an estimate should be made by the Trustees of the cost of the drainage operations to date; the quantity of lands affected by the drainage operations, and in that way determine upon a minimum price for all lands lying within the drainage district which may have been beneficially affected by the drainage operations to date.

The letter of Mr. Jennings contains a copy of a letter, written by Mr. Davie from Colorado Springs, under date of May 4th, in which Mr. McKinnie requests that the Trustees sell Section 36, Tp. 50 R. 41, and Section 34, Tp.

50 R. 40, and that if the Trustees will make this concession that Mr. McKinnie and his associates "will go ahead and play the game."

Mr. McKinnie also requests that Mr. Newman let a contract for a canal 12x4 to run from the main canal to the southwest corner of Section 2, Township 51, Range 41.

Mr. Jennings states that he wired Mr. Davie that he could not recommend to the Trustees that they grant the additional sections mentioned, to which Mr. Davie replied in such a way as to indicate that these lands were to be purchased by Mr. Davie and Mr. McKinnie for speculation; that they make no guarantee of building a sugar sugar."

I think that if any concessions are to be made by the Trustees to Mr. Davie and Mr. McKinnie both as to the mill, but that their "hope for profit is in developing the price of lands and the quantity to be sold, that there should be some definite and positive agreement as to the erection of a cane mill and a sugar plant upon the territory.

I am not in favor of making a sale of a large tract of land to speculators that they may hold the same and extort a large price from bona fide settlers or truck farmers.

Before any sale is made, therefore, I will insist both upon publicity being given to the proposed sale, and in the event of the sale of a large tract or any special concessions being made by the Trustees that some positive agreement be entered into between the proposed purchasers and the Trustees as to the character of improvements to be made upon the lands.

Yours very truly,

W. H. ELLIS,

Attorney General.

PAYMENT OF MILEAGE AND TRAVELING EXPENSES OF WITNESSES BEYOND LIMITS OF STATE.

Tallahassee, Fla., June 12, 1908.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of June 6th calling my attention to a communication of yours dated February 19th, which I supposed had been answered, as it had passed off of my desk.

The communication referred to has to do with the payment by the clerk of the Circuit Court of Manatee County to a witness before the grand jury at a fall term of the court, 1907, of railroad fare, Pullman fare, meals, laundry, actual damage to clothes and other incidentals actually necessary and incurred in a trip from Seattle, Washington to the Florida line near Flomaton, Alabama, of a sum amounting to $364.30, and mileage from the Florida line to Bradentown at five cents per mile and a per diem of one dollar.

It seems that the witness was a resident of Seattle in the State of Washington, and was a witness in behalf of the State in a criminal cause pending in Manatee County.

The witness went to Bradentown, appeared before the grand jury, was duly discharged, and was thereupon paid in addition to the mileage and per diem allowed by law, a sum amounting to $364.30, which was estimated to be sufficient to cover the railroad fare, Pullman fare, meals, laundry, actual damage to clothes and other incidentals actually necessary and incurred on the trip from Seattle, Washington, to the Florida line near Flomaton, Alabama, and return to Seattle from that point.

I am advised of no statute which authorizes the payment of actual traveling expenses, damage to clothes or other incidental expenses to witnesses who appear before

grand juries in this State to testify as witnesses in behalf of the State.

The statute fixes the pay of witnesses before the grand jury at five cents per mile and one dollar per diem for each day's attendance. The mileage is estimated on the basis of the number of miles actually traveled going to and from the court house, but in my opinion this does not apply beyond the limits of this State.

I return herewith the bill of Mr. Fuller, the letter of Hon. Robert H. Roesch, Mr. Phillips' memoranda and the card of Mr. Miller.

Yours very truly,
W. H. ELLIS,
Attorney General.

"EXTRAORDINARY" AND "CURRENT" EXPENSES OF STATE.

Tallahassee, Fla., July 20, 1908.

Hon. N. B. Broward,
Governor,
Tallahassee, Fla.

Dear Sir:

Replying to your letter of July 16th, I beg to advise that my letter to Hon. A. C. Croom of August 5th, 1907, stated that it was the evident purpose of the law that no contract should be made nor obligation incurred for the payment of money from the General Revenue Fund except for the current expenses of the State, not including appropriations for school purposes, until the Board of Commissioners of State Institutions should say that the funds would be available to meet the proposed obligation when the same should become due.

I further stated that only such proposed expenditure which could not be classed as current expense or salaries of public officers, was prohibited by the terms of the act.

My letter further stated that the appropriation for a Governor's mansion was, in my judgment, an extra-

ordinary expense, and could not be classed as a current expense under Chapter 5603 of the Acts of 1907.

Chapter 5603 went into effect on June 4th, 1907, and in my judgment it could not affect the rights of any persons which might have accrued under the acts of the Legislature passed prior to June 4, 1907. Consequently, any contracts which were made under the provisions of Chapter 5472, Acts of 1905, prior to June 4, 1907, would not be affected by the latter act, and any money due any person with whom contracts had been made prior to June 4, 1907, should be paid out of the appropriation provided for under Chapter 5472, without reference to a certificate from the Board of Commissioners of State Institutions, as provided for under Chapter 5603.

Chapter 5604, approved June 3, 1907, and which went into effect on that date, was enacted for the purpose of enabling the Governor's Mansion Commission to purchase furniture for the Governor's mansion, provided for by Chapter 5472, for the improvement of the grounds and the purchase of two additional lots in the same block on which the mansion is located, and for such other improvements and expenses as might have been deemed necessary or advisable by the commission.

This act was not intended nor does it state that the appropriation which it carried was to be regarded as supplementary to the appropriation made by Chapter 5472. To make myself clearer, I mean to say that the Legislature did not, by Chapter 5604, intend that out of the appropriation of fifteen thousand dollars therein provided for, the balance due upon any contracts made under the provisions of Chapter 5472 should be paid. It is my opinion, therefore, that any contract made under provisions of Chapter 5604 after June 4, 1907, is subject to the provisions of Chapter 5603.

Yours very truly,

W. H. ELLIS,

Attorney General.

SPECIAL EXAMINATION FOR TEACHER.

Tallahassee, Fla., September 29, 1908.

Hon. W. M. Holloway,
State Supt. Public Instruction,
Tallahassee, Florida.

Dear Sir:

I have the honor to acknowledge receipt of your letter of even date, advising in effect that Miss Eva Hodge, one of the assistant teachers in the Sopchoppy High School, was forced by illness to abandon her work at the last regular examination for teachers after two days' attenddance, and asking for a construction of Chapter 5391, Acts 1905, having to do with special examinations.

You are advised that, in my opinion, the facts stated bring Miss Hodge's case clearly within the class intended to be covered by the provisions of Chapter 5391, and the County Superintendent of Wakulla County should give the special examination as provided by said chapter, if he is requested by Miss Hodge so to do.

Yours very truly,
W. H. ELLIS,
Attorney General.

COUNTY COMMISSIONER RECEIVING TWO SALARIES FROM COUNTY.

Tallahassee, Fla., October 28, 1908.

Hon. Ernest Amos,
State Auditor,
Tallahassee, Fla.

Dear Sir:

I have the honor to acknowledge receipt of your letter of the 24th instant, asking me, in effect, to advise you if a County Commissioner can lawfully receive a monthly salary as the superintendent of a county institution, supported by the county, when he devotes only a portion of his time to such superintendency.

It is the policy of our law to place around public officials such safeguards as will preclude all temptation in public matters, and the law is intended to reach the class of cases stated in your letter.

One thus situated would be required, in his capacity as County Commissioner, to pass upon and approve the accounts for his own salary as superintendent, and should the question of sufficiency of his salary as such superintendent arise he would be required to pass upon such question, thus becoming his own judge, and his duty as a public official and his private interests become diametrically opposed, producing a condition which the law contemplates shall not exist.

Such transactions are condemned as being opposed to public policy; therefore, it is my opinion that a County Commissioner, as such, cannot lawfully approve and order paid an account in favor of himself for this character of services rendered by him to the county, and the County Treasurer can properly refuse to pay any warrant so issued, or its payment can be so enjoined.

Yours very truly,
W. H. ELLIS,
Attorney General.

PAYMENT OF TRAVELING EXPENSES OF REPRESENTATIVE OF ATTORNEY GENERAL.

Tallahassee, Fla., November 16, 1908.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I have the honor to acknowledge receipt of your letter of the 9th inst., returning (unpaid) account of J. L. Billingsley for $9.75, approved by me for payment from the appropriation for "Expenses Collection of Revenue," which account is to cover the actual traveling expenses of Dr. Billingsley to Live Oak and return, to which place he went at my direction to look into the status of the

former suit of Florida Railway vs. Croom, Comptroller, et al., and to secure in connection therewith certain papers to be used in the defense of a suit of more recent date between the same parties, involving practically the same subject-matter.

This account is returned, and I also hand you herewith for payment a similar account of Mr. Billingsley's, dated November 9th, 1908, for $10.75, covering his actual traveling expenses to Lake City and return, as set out in the account.

Under authority vested in me by Section 88 of the General Statutes, I appointed Mr. Billingsley to perform this duty in my stead in these instances, and as both accounts are to cover actual expenses incurred by this office, incident and necessary to the proper defense of the suit of Florida Railway vs. A. C. Croom, Comptroller, et al., having to do with the collection of revenue, it is my opinion that such accounts are a proper charge against the appropriation for "Expenses Collection of Revenue," and should be paid from that fund.

Yours very truly,
W. H. ELLIS,
Attorney General.

TITLE TO ARMORY FROM FRANKLIN COUNTY TO STATE.

Tallahassee, Fla., November 21, 1908.

Hon. N. B. Broward,
Governor of Florida,
Tallahassee, Fla.

Dear Sir:

In a letter of recent date addressed to me upon the subject of an appropriation for an armory at Apalachicola, you ask if any steps have been taken by the people of Apalachicola to perfect the title of the property.

I note that you say that you had been informed by Mr. Croom that it was his recollection that the citizens of

Apalachicola were to do something to perfect the title. On August 8th, 1907, I wrote to Hon. J. F. C. Griggs of Apalachicola, Florida, in reply to a letter from him, requesting my opinion upon the title to the property described in Chapter 5284, Laws of 1903. In addition to the documents which had been submitted to me on a former occasion, Mr. Griggs submitted other documents and information which cleared up to my satisfaction the title to the property in question. In my letter to him, I expressed the opinion that the title of the County of Franklin to the property was good.

On August 29th, 1907, I received a letter from Hon. A. C. Croom, Comptroller, enclosing a deed from Franklin County to the State of Florida for the armory located in the city of Apalachicola, and requesting my opinion as to the sufficiency of the deed and if the appropriation made by Chapter 5284 was in any way affected by Chapter 5603 of the Laws of 1907. In reply to that letter I wrote Mr. Croom on August 30th, returning the deed with the opinion that it had been correctly drawn and properly executed, and that under the provisions of Chapter 5605 a certificate should be obtained from the Board of Commissioners of State Institutions that the funds necessary to meet the payment on the property are available before the obligation should be incurred.

It appears from the foregoing that the people of Apalachicola perfected the title to the armory over a year ago, and that Mr. Croom has had in his possession the deed from Franklin County to the State for the property in question, for that period.

Yours very truly,

W. H. ELLIS,

Attorney General.

IN RE. TRESPASS BY J. N. C. STOCKTON UPON CERTAIN LANDS.

Tallahassee, Fla., November 20, 1908.

Hon. J. Clifford R. Foster,
Adjutant General of Florida,
Vice-Chairman State Armory Board,
St. Augustine, Florida.

Dear Sir:

In re trespass committed by John N. C. Stockton upon lands held in custody by the State Armory Board since February 10, 1908.

The deed of conveyance made by the Hillman-Sutherland Company to Joseph H. Phillips, under date of January 2, 1906, conveyed in fee simple estate in the lands described to the grantee, but it contained a reservation of a certain description of timber trees.

In construing a deed the design of the maker and not the words is the principal thing to be regarded. I think that a reservation like that referred to in the deed mentioned continued the property in the trees in the grantor with the right in so much of the soil as was necessary to sustain them for the period specified in the reservation. After the execution of the deed, therefore, to Mr. Phillips, the Hillman-Sutherland Company retained the title to the trees described in the reservation.

The Hillman-Sutherland Company by deed dated the 19th of July, 1907, conveyed its title to those trees to John N. C. Stockton. This deed, in my opinion, vested the title to that particular property in Mr. Stockton and amounted to more than a mere license to enter upon the land to cut and remove the trees. This seems to have been the opinion of Mr. Stockton and Mr. Phillips when the agreement was entered into between them under date of August 9th, 1907, for it is set out in that agreement that the party of the first part had acquired from the Hillman-Sutherland Company all the trees and timber which would scale ten inches two feet from the base, standing and fallen, together with the right to cut, fell, remove the

said timber and trees subject to such rights as were granted to Goss Mattox by the Hillman-Sutherland Company for a period of four years from January 1, 1906.

In the contract between Mr. Stockton and Mr. Phillips the former agreed for and in consideration of $750 to remove from the three hundred acres of land described in the agreement all the standing and fallen trees and timber which would scale ten inches two feet from the base within a period of four months from the date of the agreement, and that he would remove from the balance of the land which he acquired under deed from Hillman-Sutherland Company all the standing and fallen trees and timber within a period of one year from the date of the agreement.

The performance of this agreement was contingent upon the acquisition by the Jacksonville Board of Trade from Mr. Phillips of the three hundred acres described in the agreement. In my opinion this agreement does not constitute a conveyance by Mr. Stockton to Mr. Phillips of the trees, the title to which was acquired by Mr. Stockton under deed from the Hillman-Sutherland Company, nor, in my judgment, does his failure to remove the trees within the period specified in the agreement operate as a forfeiture of his interest in the trees to Mr. Phillips.

If Mr. Stockton has violated his agreement an action upon the contract arises in favor of Mr. Phillips for the benefit of the real party in interest.

I return herewith Exhibits A, B, C, D, and E:

(a) Copy of deed from Hillman-Sutherland Company to Joseph H. Phillips.

(b) Copy of deed from Hillman-Sutherland Company to Goss Mattox.

(c) Copy of deed from Hillman-Sutherland Company to John N. C. Stockton.

(d) Copy of deed from R. W. Mattox Company to Joseph H. Phillips.

(e) Copy of agreement between John N. C. Stockton and Joseph H. Phillips.

Yours very truly,
W. H. ELLIS,
Attorney General.

PAYMENT OF EXPENSES OF STATE TROOPS ACCRUED WHILE QUELLING RIOTS.

Tallahassee, Fla., November 20, 1908.

Hon. N. B. Broward,
Governor,
Tallahassee, Fla.

Dear Sir:

I am in receipt of your letter of the 16th instant, requesting my opinion as to whether the expenses incurred by the State Troops during the recent riots at Pensacola, to which place the troops were ordered for the purpose of aiding the civil authorities, should be paid from the regular appropriation for maintenance of the State Troops; and if such expense is not payable from that appropriation, what provision of the law there is, if any, for the payment of such expenses.

Under the Constitution the Governor is required to take care that the laws be faithfully executed. Section 716 of the General Statutes provides that whenever there exists a riot, mob, unlawful assembly, breach of the peace or resistance to the execution of the laws of the State * * * and the civil authorities are unable to suppress the same it shall be the duty of the commander-in-chief * * * to issue an order to the officer in command of the nearest company or body of troops commanding him to proceed with the troops under him, or as many thereof as may be necessary, with all possible promptness, to suppress the same.

Section 717 prescribes the duties of officers and enlisted men when they are ordered out under the provisions of

the preceding section. Section 722 provides that when the State troops are called out in aid of the civil authorities the officers and men shall receive the same pay and subsistence as at the time are allowed by law in the United States Army.

Section 723 provides how the pay rolls shall be made out and certified, with which should be submitted certified vouchers, in triplicate, for actual expenses of transportation. Section 725 provides that it shall be the duty of the Comptroller, upon the requisiton of the Adjutant General approved by the commander-inchief, to draw his warrant upon the Treasurer in favor of the Adjutant General for such expenditures as are authorized, which shall be paid out of any money in the treasury appropriated for the maintenance of the Florida State Troops, and that when the appropriation is insufficient the Adjutant General may pay the troops prorata, upon triplicate pay rolls, one copy of each to be filed with the Comptroller, one in the office of the Adjutant General and one to be retained by the brigade, regimental, battalion, company or battery commander, as the case may be.

Chapter 5672, entitled "An Act to provide for the establishment of a permanent camp site for the Florida State Troops," provides in Section 3, that any funds appropriated for the purpose of covering the expenses of encampments and field exercises of the Florida State Troops and not wholly so expended, may be applied to the purpose of preparing, equipping and maintaining this camp site. Chapter 5598, entitled "An Act making appropriation for the expenses of the State government for six months of the year 1907 and for the year 1908 and for six months of the year 1909," appropriated for encampments and field exercises for the Florida State Troops for six months from July 1, 1907, to December 31, 1907, the sum of fifteen thousand dollars; and for the expenses Florida State Troops, including rent of armories and allowances for the same period, $7,432.50. The same act appropriated for the year 1908 the sum of $14,865.00 for the expenses Florida State Troops, including the rent of armo-

ries and allowances, but makes no appropriation for encampments and field exercises.

It appears, therefore, from the reading of these statutes that it was the intention of the Legislature to apply so much of the appropriation for encampments and field exercises as remained unexpended to the purpose of repairing, equipping and maintaining the camp site, but it was not intended by Chapter 5672 that any part of the appropriation for the expenses of State Troops, including the rent of armories and allowances, should be so applied. The sections of the General Statutes referred to in this letter control. They have not been amended by the Legislature, and Section 725 expressly directs that the expenses incurred by the State Troops when they are called out in aid of civil authorities shall be paid out of any money in the treasury appropriated for the maintenance of the Florida State Troops.

Yours very truly,
W. H. ELLIS,
Attorney General.

EXPENSE ACCOUNT OF ASSISTANT STATE CHEMIST—TRAVELING EXPENSES.

Tallahassee, Fla., November 28, 1908.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I have the honor to acknowledge receipt of your letter of the 24th instant, submitting for my consideration an account rendered by Mr. B. H. Bridges, as Assistant State Chemist, for "Traveling expenses to Washington and return, as representative of Bureau of Chemistry to the Association of Official Agricultural Chemists and the National Association of Farmers' Institute Workers," amounting to $78.20, and requesting my opinion as to whether the amount was properly chargeable to the travel-

ing expenses of State Chemist, as requested in the bill or statement of account.

The appropriations act making provision for the payment of the expenses of the State government for the year 1908 appropriated the sum of one thousand dollars for traveling expenses inspecting fertilizers. This is the only appropriation made for the traveling expenses of the State Chemist, and limits the expenditure of such appropriation to expenses incurred in inspecting fertilizers.

It appears from the account rendered by Mr. Bridges that the expense for which the bill was rendeed was not incurred while inspecting fertilizers, and consequently should not be paid from the appropriation referred to. The account is returned herewith.

Yours very truly,
W. H. ELLIS,
Attorney General.

APPROPRIATIONS FOR SPECIFIC PERIODS OF TIME.

Tallahassee, Fla., November 28, 1908.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

I have the honor to acknowledge receipt of your communication of yesterday, requesting me to advise you if "under the phraseology of the act and the probable intention of the Legislature as expressed by the phraseology of the appropriation bill limiting the appropriation to specific dates, it would be proper and right to pay bills accruing in 1908 out of an appropriation specifically made for the maintenance of the Florida State troops from the first day of January, 1909, to the first day of July, 1909."

The General Appropriations Act, in Section 2, appropriated the sum of $2,500 for the salary of the Adjutant General for the year 1908, and the sum of $14,865 for the

expenses Florida State troops, including rent of armories and allowances.

For the period of six months, from January 1st to June 30th, 1909, the Legislature appropriated the sum of $1,250 for salary of the Adjutant General, $7,432.50 for expenses Florida State troops, including rent of armories and allowances, and the sum of $15,000 for encampments and field exercises.

The General Appropriations Act is entitled "An Act Making Appropriations for the Expenses of the State Government for Six Months of the Year 1907, and for the Year 1908, and for Six Months of the Year 1909."

The act distinctly limits each appropriation to a period designated in the act, and the purpose of each appropriation is to cover the expenses incurred for that particular period.

It was the evident purpose of the Legislature that in the administration of governmental affairs, accurate and systematic accounts should be kept showing the expenses of the State government by periods. In the absence of an act providing otherwise, no unexpended appropriation for a particular period could be used to defray the expenses incurred during a subsequent or former period.

Section 139 of the General Statutes requires the State Treasurer to keep permanently an account under the head of "Surplus Fund," to which shall be transferred at the end of every fiscal year all unexpended balances of appropriations made for said fiscal year, and shall at each session of the Legislature exhibit the same in his report.

This indicates that it was the purpose of the Legislature that the expenses incurred during any one period should be borne by the appropriation made for that particular period.

At every session of the Legislature appropriations must be made for the expenses of the State government, and it is necessary that the Legislature should be accurately advised of the financial necessities of each department or arm of the State government, and to that end the State Treasurer and Comptroller are required to advise the

Legislature of all receipts and expenditures of the State government, and guided by these reports and other information appropriations are made to cover the expenses incurred by the different arms of the government for particular periods, and the language of the general appropriations act expressly limits the appropriations to the expenses incurred during the particular period named.

It is my opinion, therefore, that when expenses are incurred by any department of the State government in excess of the appropriation covering the period during which the expenses shall be so incurred, there exists no appropriation out of which such excess expenses may be met.

Yours very truly,
W. H. ELLIS,
Attorney General.

TRAVELING EXPENSES OF ADDITIONAL ASSISTANT STATE CHEMIST.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.

Dear Sir:

Chapter 5662 makes no appropriation at all for traveling expenses for the Additional Assistant Chemist; appropriation of $750.00 per annum is made to pay the actual expenses "of the Food and Drug Inspector" while discharging his duty. His whole time is at the disposal of the Commissioner, and his duty is to travel about the State, as directed, and take samples of such articles as directed and forward them to the Department of Agriculture for scientific examination and analysis. It becomes the duty of the Additional Assistant Chemist to make such scientific examination and analysis of the articles forwarded by the inspector, for which service the act provides that he shall receive a compensation not to exceed $1,800 per annum, but no part of the appropriation for

the actual expenses of the Food and Drug Inspector is available for the traveling expenses of the Additional Assistant State Chemist. In fact, the act does not contemplate that the Additional Assistant State Chemist shall expend any money in traveling expenses.

Section 14 of the act contains an appropriation of $5,000, or so much thereof as may be necessary, to enforce and carry out the provisions of the act. If this is construed to be an annual appropriation of $5,000, the margin of $950 in excess of the salary of the Food and Drug Inspector, his traveling expenses and the salary of the Additional Assistant State Chemist is provided for, such expenditures as apparatus, chemicals and increased laboratory facilities as in the judgment of the Governor may be required.

I herewith return the account of Mr. Bridges and letter of Captain Rose.

Yours very truly,
W. H. ELLIS,
Attorney General.

LETTERS OF THE ATTORNEY GENERAL.

Following are a number of letters (unofficial) written in answer to communications requesting information of the Attorney General on various questions. They contain information that may be of interest to county officials and the public generally.

CITY ELECTION.

Tallahassee, Fla., January 7, 1907.

Dear Sir:

I am in receipt of your letter dated December 4th, which I presume was a mistake in that the letters were received here on the afternoon of January 6th.

In regard to the legality of the proposed city election to be held in Dade City on the 14th day of January, I have to say that under Section 1050 of the General Statutes the town council of the town of Dade City, if that municipality was organized under the General Statutes, has the power to provide for the election by the qualified voters of the town of the executive and other officers for that municipality. Under that section I think the council would have the right to prescribe when and at what place general municipal elections should be held.

If the town council has by ordinance designated the time and place when the general municipal election shall be held, then I think that the notice given, both as to its form and publications, is not regular in that point where the election would be invalid.

The law seems to be, as written both by Judge Cooley and Judge Dillon, that whenever both the time and place of an election are prescribed by law, every voter has a right to take notice of the law and deposit his ballot at the time and place appointed, notwithstanding the officer whose duty it is to give notice of the election has failed

in that duty; the notice to be given when the ordinance fixes the time and place for holding the election is only additional to that which the ordinance gives. In that case the right to hold the election comes from the statute and not from the proclamation.

If, on the other hand, the ordinances of the town do not fix the time and place specifically, when and at which the election shall be held, but leave it to the judgment of the mayor to be fixed by his proclamation; then I think the publication published in a weekly newspaper one time, thirty days prior to the date of the election fixed in the proclamation, is an insufficient publication, when the ordinance requires a thirty days' publication of the proclamation.

Yours very truly,

W. H. ELLIS.

PERFORMING FUNCTIONS OF MORE THAN ONE OFFICE.

Tallahassee, Fla., February 9, 1907.

Dear Sir:

Section 15 of Article XVI of the Constitution of Florida provides, "No person holding or exercising the functions of any office under any foreign government, under the government of the United States, or under any other State, shall hold any office of honor or profit under the government of this State, and no person shall hold or perform the functions of more than one office under the government of this State at the same time; provided, notaries public, militia officers, county school officers and commissioners of deeds may be elected or appointed to fill any legislative, executive or judicial office."

Yours very truly,

W. H. ELLIS.

ESTABLISHMENT OF A MUNICIPAL GOVERNMENT.

Tallahassee, Fla., February 20, 1907.

Dear Sir:

Yours of the 16th instant has been received.

Under the General Statutes of this State the inhabitants of any hamlet or village, who are registered voters residing in the proposed corporate limits, have the right to establish for themselves a municipal government with corporate powers and privileges. Before they are permitted to incorporate, they must publish a notice for not less than thirty days in some newspaper in the county, or by posting in three places of public resort in the immediate vicinage, requiring all persons who are registered voters residing in the proposed corporate limits, which shall be stated in the notice, to assemble at a certain time and place to select officers and organize a municipal government. At the time and place designated in the notice, the qualified electors present, who must be not less than twenty-five, and in no case less than two-thirds of those whom it is proposed to incorporate, shall select a corporate name and seal for the municipality which they propose to form, and designate by distinct metes and bounds the territorial limits thereof. When that is done, they then proceed by a vote of a majority of those present, to elect a mayor and not more than nine nor less than five aldermen, and the other officers of a municipality. I refer you to Sections 999 *et. seq* of the General Statutes.

Under the law of this State a man must reside in the State for twelve months and in the county for six months before he becomes qualified to register. A man who resides outside of the proposed corporate limits but who does business within the proposed corporate limits is not qualified to participate in the meeting. Residence within the proposed corporate limits is one of the qualifications.

The Legislature may enact special statutes providing for the incorporation of cities and towns.

Yours very truly, W. H. ELLIS.

OPENING OF REGISTRATION BOOKS.

Tallahassee, Fla., March 20, 1907.

Dear Sir:

Your letter of the 19th has been received.

Sections 1209 to 1221 inclusive of the General Statutes of 1906 relate to "local elections concerning the sale of liquor." Section 1210 provides that "For such election, electors may be registered as provided in the general law for registration of special elections, and they shall have the same qualifications for and prerequisites to voting as in elections under the general election laws."

From the reading of this section one might infer that there was in the general law for registration a provision made for registration for special elections, but such is not the case. Section 163 of the Revised Statutes of 1892 provided "That any person shall be allowed to register at any time after the ordering and ten days before the holding of any special election held in any county." But the entire subject of registration of voters and the holding of general and special elections was revised by the act of 1895, Chapter 4328, and the clause providing for registration for special elections was omitted.

Section 183 of the General Statutes provides for the opening and closing of the registration books in each year in which there is a general election. The time for closing is the second Saturday in the month preceding the day in each year in which there shall be a general election." It also provides that "No person shall be allowed to register at any other time than during the period herein provided for the opening of said books for registration of electors.

I am of the opinion, therefore, that the statute does not provide for the opening of the registration books other than in a general election year, and only then during the time provided for in Section 183 of the General Statutes. The statute does not provide for the opening of the registration books for special elections.

Section 1210, to which reference has been heretofore made, provides that in elections concerning the sale of liquor, electors "shall have the same qualifications for and prerequisite to voting as in elections under the general election laws."

Section 170, sixth division, of the General Statutes provides that: "No person shall be permitted to vote at an election who shall have failed to pay at least on or before the second Saturday in the month preceding the day of such election, his poll taxes for the two years next preceding the year in which such election shall be held; Provided, that no person shall be prevented from voting on account of not having so paid a poll tax for any year which shall not have been lawfully assessable against him by reason of his not having been of age, or having been over fifty-five years of age, or who has lost a limb in battle, and who shall have procured and shall exhibit the certificate of a supervisor of registration to that effect as hereinafter provided for; Provided, that no person who has not been in this State one year previous to any general election, shall be required to pay more than one year's poll taxes."

It is my judgment, therefore, that it is necessary for one to have paid his poll taxes for two years next preceding the year in which an election is held on or before the second Saturday in the month preceding the day of the election, which in this case would be February 9th, 1907. Also, that it is necessary for one who claims exemption from paying poll taxes on account of being over the age of fifty-five years, or on account of having lost a limb in battle, to have a certificate of the supervisor of registration to that effect, before such person is entitled to participate in the election to be held on the 26th instant in Gadsden County.

Yours very truly,

W. H. ELLIS.

PAYMENT OF BILL OF SHERIFF FOR CONVEYING LUNATICS TO CHATTAHOOCHEE.

Tallahassee, Fla., April 6, 1908.

Dear Sir:

Yours of the 4th to hand. I note from your communication that the County Commissioners of Hillsborough County, under your advice, are deferring action upon a bill presented by the Sheriff of Hillsborough County for $875.00, for services rendered in conveying seven lunatics to Chattahoochee.

I judge from the statements in your letter that this bill is made up of mileage on the basis of ten cents per mile each way from Tampa to Chattahoochee, and $3.00 per day for the number of days consumed in transporting the lunatics from Tampa to Chattahoochee.

You ask my opinion upon the question, if, under the provisions of Section 1683 of the General Statutes, the Sheriff would be entitled to compensation of $3.00 per day, and if the State should furnish the transportation in the matter of conveying the lunatics to the Hospital for the Insane.

Under Section 1203 of the General Statutes it is the duty of the Sheriff, when a person is adjudged insane under the order of the court, to at once deliver the person adjudged insane to the Superintendent of the Florida Hospital for the Indigent Insane.

Under the provisions of Section 1204, the Sheriff receives such compensation as might be deemed reasonable by the County Commissioners, but not to exceed that allowed for service of summons *ad res.* That section provides that all the accounts accruing in pursuance of the chapter shall be approved and paid by order of the county, and that no expense, cost or charge shall be paid by the County Commissioners except cases where the person declared the lunatic was by reason of insolvency unable to pay the costs.

I think that Chapter 5457, approved June 1st, 1905, amended Section 1204, to the extent that the Sheriff's compensation for services rendered prior to the transpor-

tation of the lunatics to the hospital, should no longer be left to the discretion of the Board of County Commissioners, as to the reasonableness of such compensation, but that it should be measured by a standard fixed by the latter act. That act provides that he shall receive the same fee for services in lunacy proceedings as are prescribed for like services in criminal cases.

The compensation prescribed by Section 1683, to be paid to the Sheriff for conveying a prisoner to the State prison, in my judgment, is not compensation in criminal cases within the meaning of Chapter 5457. The word "cases," as used in that chapter, has a specific meaning and refers to facts or transactions involving matters for decision. It embraces everything relating to the subject, adjudicated up to and including the judgment of the court. I do not think it is any longer a case after the judgment has been rendered. This seems to be made clear by the fact that the compensation allowed to the Sheriff for transporting a person to the State prison is not embraced in and made a part of the the costs in a criminal case; if it was, such expense would have to be paid by the county, as the Constitution requires that the costs in criminal proceedings shall be paid by the county.

As Section 1204 and Chapter 5457 are in relation to the same matter, they must be construed together, so that both statutes may stand if possible, and only such portion of one eliminated as is wholly irreconcilable with the latter act.

In my opinion, after the judge before whom the lunacy proceedings were taken has made and entered his judgment as to the mental status of the person whose sanity is inquired into, and made his order that the Sheriff transport him to the Hospital for the Insane, the lunacy proceedings have ended within the contemplation of Chapter 5457, which fixes the compensation of the Sheriff for like services in criminal cases.

It follows, therefore, that the expenses incurred in transporting lunatics to the Hospital for the Insane and delivering them to the superintendent of that institution, are matters which must be considered by the County

Commissioners, and the Sheriff allowed such compensation by them as in their judgment is reasonable. This compensation must, of course, be paid by the county under the provisions of Section 1204.

Yours very truly,
W. H. ELLIS.

CONTRACT OF SCHOOL BOARD WITH MEMBER OF BOARD PROHIBITED.

Tallahassee, Fla., May 4, 1907.

Dear Sir:

Your letter of the 26th ult. has been received. In the first place, trustees of special tax school districts have no power under the law to borrow money; if such power was given to them by law, it would be wrong to make a contract with a fellow trustee for a loan.

The statute provides that no Board of Public Instruction shall have power to enter into contracts with any of its members, except for the purpose of obtaining school funds. This indicates the policy of the law. Section 409 of the General Statutes provides that the Board of Trustees shall have the right to say what proportion of the school fund raised within the district shall be applied in any year to buildings, salaries of teachers, and other educational purposes, provided that they shall make a fair and equitable distribution of the funds among all the schools in the special tax school district, which shall be shown in the itemized estimate.

Yours very truly,
W. H. ELLIS.

"RECEIPTS" AS APPLIED IN SCHOOL LAW.

Tallahassee, Fla., June 21, 1908.

Dear Sir:

I am in receipt of your letter of the 20th, asking me if in the new law prescribing the salary of County Superin-

tendents of Public Instruction, the word "receipts" means simply what is turned over to the Treasurer during the year, or if it included cash left on hand from previous years. You requested that I make this clear. It is difficult for me to make the status clearer by interpretation; in fact, to my mind, the language of the statute is so clear that interpretation is unnecessary.

The act provides that salaries of County Superintendents of Public Instruction be based upon "Total annual receipts," and it expressly excepts borrowed money. Now, any balances which may be brought over from the previous years can not, by any consideration, be regarded as receipts of the ensuing year.

Yours very truly,

W. H. ELLIS.

INTOXICATING LIQUORS.

Tallahassee, Fla., July 11, 1907.

Dear Miss Neal:

In answer to your questions in your letter of July 8th, in the order in which they are propounded, so far as I can answer the same, I beg to reply as follows:

1st. The sale of domestic wines in a county which has voted against the sale of whiskey, wines and beer under the local option clause of the Constitution, is unlawful.

2nd. Section 3561 of the General Statutes provides that it should be the duty of all sheriffs, deputy sheriffs, constables and police officers in their respective jurisdictions, and they are thereby authorized and empowered to enter into a building, booth, tent or other places, or part thereof, with or without warrant, in which they have good cause to suspect that spirituous, vinous or malt liquors are kept for sale, contrary to law, and to seize the same and arrest the parties so engaged in such sales, etc.

3rd. Section 3552 of the General Statutes provides that whoever sells any intoxicating liquors, wines or beer to a minor, or to an intoxicated person, shall be punished as if he had sold liquor without a license.

The statute does not authorize the withdrawal of the license to sell whiskey upon the sale, by the holder of such license, of whiskey to a minor, nor is there any provision of which I am advised for forfeiting license issued to the saloon keeper for permitting shooting in his saloon.

Yours very truly,

W. H. ELLIS.

FEES OF CONSTABLES IN CERTAIN CASES.

Tallahassee, Fla., August 5, 1907.

Dear Sir:

Some time ago I received from you a letter in which you discussed the authority of a constable to go into another county and receive a prisoner arrested in the county upon a warrant issued by a Justice of the Peace of a district for which the constable was elected, and the matter of the payment by the county of the costs incurred by the constable. I do not recall whether I answered your letter. Today I looked over my files and letter book carefully, and do not find any evidence of my replying to your communication. If I did not, I beg your pardon.

A constable is equally with the Sheriff executive officer of the courts of Justices of the Peace and county judges. Sections 3902 and 2904, General Statutes.

The fees of constables are the same as those allowed to Sheriffs for like service. Section 1689, General Statutes.

Section 1687 provides that any constable of the county in which the process issued may serve process of County Judges' courts and Justice of the Peace courts in any district of said county where the same may be lawfully served. This is authority for his serving criminal process from County Judges' courts and Justice of the Peace courts anywhere in the county, but in no case is he entitled to greater mileage than if the writ issued from the Justice of the Peace court of the district in which such constable resides and for which he was elected.

Warrants to apprehend offenders against the criminal

laws of this State run throughout the State. Section 3928, General Statutes.

Section 1683 provides that when mileage is paid, the distance shall be estimated from the court house to the point of execution of process.

I think that when a warrant issues for one who has fled to another county in the State, and the warrant is duly endorsed by the Judge or Justice of the Peace of the county to which the accused has fled, and the accused is arrested in that county and returned by the Sheriff of the county in which the warrant issued, mileage should be computed from the court house door of the county in which the warrant issued to the point where the accused was arrested.

Whether a constable is allowed such mileage depends upon his power to take the accused into his custody out of the county and bring him back a prisoner before the court issuing the warrant.

At common law, a Sheriff had no jurisdiction beyond the limits of his county. The Constitution of the State creates the offices of Sheriff and constable, and authorizes the Legislature to prescribe their powers and duties, but the statutes do not authorize either officer to make arrests beyond the boundaries of their counties.

If the Sheriffs and constables of the State did not have the power to go into other counties than those in which they were elected, and to which persons accused of crime had fled, and receive from the executive officers of the courts of the latter counties such accused persons and return with them to the county from which they fled, the criminal laws of this State could not be administered. So I think the Sheriffs of this State have that power, and constables also have the same power when the process issued from the courts of which they are made by law executive officers.

Yours very truly,

W. H. ELLIS.

COMPENSATION OF COUNTY COMMISSIONERS.

Tallahassee, Fla., August 30, 1907.

Dear Sir:

In reply to your letter of the 27th instant, I beg to say that Chapter 5695, Laws of 1907, is, so far as I am advised, the last expression of the Legislature on the subject of compensation of County Commissioners. That chapter provides for a per diem of four dollars, and mileage of ten cents per mile actually traveled in going to and from the court house. This mileage is limited, therefore, to the miles traveled when a County Commissioner attends meetings of the board. The per diem is applied to any service which the Board of County Commissioners may require to be performed by a member.

In view of the particular wording of the statute, there should be no complaint from the member of the Board of County Commissioners because of any limitation prescribed by law as to compensation.

Yours very truly,
W. H. ELLIS.

PER DIEM OF DEFENDANT'S WITNESSES.

Tallahassee, Fla., Sept. 9, 1907.

Dear Sir:

I am in receipt of your letter of the 30th ultimo, relating to the difference of opinion between you and Mr. Davis, the attorney for the Board of County Commissioners, as to whether or not defendant's witnesses are entitled to their per diem in cases where the defendant has been acquitted and no insolvent affidavit made.

I think the case of County Commissioners of DeSoto County vs. Howell, 51 Florida, 160, settles the dispute between you and the county attorney. Howell was the defendant in a criminal cause pending in the County Judge's court. The complaint was withdrawn and Howell discharged, whereupon another warrant was issued; he was arrested, tried by a jury and acquitted. He had four

witnesses duly subpoenaed. Upon the acquittal of Howell claim was made for their mileage and attendance, but the County Judge refused to audit and allow the costs, because no insolvent affidavit had been filed by the accused.

Judge Hocker, who rendered the decision in the case, discussed the matter very fully, and, I think, answered the question submitted in your letter.

Yours very truly,

W. H. ELLIS.

DISCRIMINATION BY RAILROADS IN CERTAIN CASES.

Tallahassee, Fla., September 12, 1907.

Dear Sir:

Some time ago I received a letter from Mr. W. P. Stovall asking my views as to the right of railroad companies under the act of 1907 to issue transportation in payment for newspaper advertisements. In reply to that letter I wrote as follows:

"In my opinion Chapter 5621 does not apply to cases where in consideration for services rendered or to be rendered by another railroad company issued passes to that other in payment for such services."

Of course I did not mean by the language used that the act did not prevent any and all discriminations that may be made in favor of certain passengers, whether the consideration paid by them be in money or other thing of value.

I think that where a railroad company issues transportation in consideration for services rendered as distinguished from money it would be necessary for the railroad company to so adjust the transportation so issued to the value of the services rendered as to avoid unjust discrimination. The controlling principle seems to me to be that where the position of the applicants is the same, and the service to be rendered is the same, the railroad

company is not authorized to make any discrimination as to the charges exacted or to be exacted for the service rendered.

All differences in rates or charges exacted by common carriers for the transportation of persons or freight do not constitute unjust discrimination. The unjustness of the discrimination, to my mind, can exist only where the service to be rendered is identical and the position of the applicants the same.

The purpose of the statute of 1907 was to break up the odious system of favoritism and special privileges which is so contrary to the principles of a system which seeks to secure equal treatment to all persons by corporations engaged in public service.

I think that out-right discrimination between persons asking the same service under the same conditions is a violation of the statute.

Commissioner Knapp, in a case reported in the Interstate Commerce Reports, said:

"No form of favoritism and no species of partiality seems more odious or indefensible than that which accords to personal influence or public station privileges not enjoyed by the community at large."

If that language expresses the spirit pervading the Act of 1907—and I think it does—it would follow that the special rates given to a Sheriff because of his position and assumed personal influence, would be a violation of the act, and subject the company to the penalty stated for issuing the transportation, as well as the person for receiving it.

I do not care to discuss the question, as my views may not be taken as I intend them to be, and I do not wish to be placed in the position of misleading anyone to his injury; for, as you know, those matters do not properly come before me officially for determination, and my opinion given to individuals is simply as a matter of courtesy.

The Railroad Commissioners may have a different view

of the statute, and I do not wish to write anything which may be regarded as an interference with its administration of the law.

Yours very truly,
W. H. ELLIS.

ERECTION OF PUBLIC BRIDGE.

Tallahassee, Fla., September 12, 1907.

Dear Sir:

I am in receipt of your letter of the 7th inclosing one from Dr. Sprague. I have carefully read your communication and fully appreciate the delicacy of the situation which has arisen in your county.

The matter of the erection of a public bridge in this county is one dependent almost exclusively upon statutory enactment. The right of the Legislature to provide for the building of bridges is limited only by the existence of some provision in the Federal statute relative to commerce or by some constitutional inhibition. The usual method of exercising the authority is to erect the bridge, either at the expense of the State or by general law, to impose the duty upon counties, towns or cities or by chartering companies for that purpose.

In this State the Legislature has imposed upon the Boards of County Commissioners the duty to build and keep and repair county bridges, buildings and roads. Section 769 General Statutes.

I think that the powers of the County Commissioners in this regard is limited by the provisions of law which provide for raising the funds for this purpose. I think that the legality of the proceedings in the matter of the erection of bridges depends in each case upon the existence of a statute enabling the Commissioners to raise the necessary funds for that purpose.

The provision of the law giving to Boards of County Commissioners the power to issue bonds in their respective counties for the purpose of erecting a court house, a

jail or to build or construct roads and to prescribe the rate of interest on the bonds is subject to the provision that no bonds shall be issued except when the same shall be ordered by a majority of the registered voters in the county.

In my judgment the statute thus provides a method for raising money for the purpose of building bridges and roads where there are not funds enough for that purpose in the treasury. The Board of County Commissioners, therefore, to contract for the erection of a bridge or bridges, which would cost the county more money than is at the time of the contract in the road and bridge fund, or which is likely to come into such fund from the tax levied for that purpose, and ignore the statute making provision for the issuing of bonds to raise the money, would be irregular, and I think, illegal.

Yours very truly,

W. H. ELLIS.

PRIMARY ELECTIONS.

Tallahassee, Fla., September 21, 1907.

Dear Sir:

Your letter of the 18th has been received. Section 255 of the General Statutes provides, as I read it, that the executive committee of any county may call a primary election to take the sense of the members of the party in that county as to the proper persons to be presented to the voters of the county at any election to be held in the county in the State for county officers.

Section 271, however, seems to provide that such primary election may be called only upon a petition by a majority of the qualified electors of the same party that the committee belongs to.

To say the meaning of these sections is veiled in obscurity is to convey a faint idea only of the depth beneath contradictory statutes to which the truth seems to be buried. The section just referred to provides that the

executive committee must be petitioned by a majority of the qualified electors of the same party (whether national, State or county, the statute does not clear up, and leaves us to imagine what its intention was). I interpret this to mean, by a majority of the qualified electors of the county when a county primary election is to be held, and by a majority of the qualified electors in the district when a primary election is to be held in the district.

Section 272 of the General Statutes, however, seemingly constitutes a second contradiction of the section first quoted by providing that the primary elections of a political party for all purposes (which of course means district, county or State), shall be held throughout the State on the same day.

Now if that statute controls, it does not matter what the county executive committee may desire with reference to the date of holding primaries, nor what a majority of the qualified electors of the county belonging to the same party may desire, all the primaries must be held on the same day throughout the State.

The contradictions which appear to me to exist in the primary election law amount to the same thing as saying: "You may hold a primary election whenever the executive committee desires to hold it at such time as a majority of the voters of the county designate; Provided, that time shall be a date fixed upon by some superior authority in the party for holding primary elections throughout the entire State."

It is a difficult matter to reconcile these contradictions, and I will not attempt to do so. I believe strongly enough in home rule to think that it was not the purpose of a Democratic Legislature to tie the hands and bridle the pleasure of the democracy of any county by restricting its right to hold primary elections to a time when it may suit the convenience of some central authority.

I would suggest, therefore, that if a majority of the Democratic voters of Lafayette County desire to hold a primary this fall for the purpose of nominating candidates for county officers to succeed the present incumbents

and petition the executive committee of that county to call such primary, that it would be right and proper and the bounden duty of the executive committee to call the primary.

Yours very truly,
W. H. ELLIS.

SPECIAL TAX SCHOOL DISTRICTS.

Tallahassee, Fla., Sept. 23, 1907.

Dear Sir:

Special tax school districts may be abolished, or their limits contracted or extended by a majority vote at an election called by the Board of Public Instruction of the county for the purpose, after publication of such notice as is required, to create such special tax district, at which election the qualification of the voters shall be the same as in elections to create special tax school districts. See Chapter 5389, Laws of 1905.

No special tax school district, however, may be abolished where it has any outstanding indebtedness without first making provisions for the liquidation of such outstanding indebtedness.

On the question of consolidating two districts, I should think that the question should be submitted to the qualified electors of both districts.

Of course, if the Board of Public Instruction undertakes to do anything forbidden by law, an injunction may be applied for and obtained to restrain the Board from so doing. The courts are created by law for the purpose of adjusting all these questions, and if people are not inclined to go into the courts for adjudication of them, why, they will have to put up with whatever grievances they may claim to exist by reason of misconduct in office.

Yours very truly,
W. H. ELLIS.

COMPENSATION OF COUNTY COMMISSIONERS—CONVICTS.

Tallahassee, Fla., Oct. 5, 1907.

Dear Sir:

I have your letter of the 3rd instant, making inquiry as to compensation of County Commissioners and as to escaped county convicts.

As to compensation of County Commissioners, I do not think the statute anticipates that they shall be allowed anything for use of horse, vehicle, etc.

As to escaped county convicts, I am of the opinion that Section 4159 of the General Statutes applies to them as well as State convicts.

I wish, however, to direct your attention to the fact that the county attorney is properly the legal adviser of your board, and not the Attorney General, and that the opinion of the latter is in no wise binding in matters of this character.

Yours very truly,
W. H. ELLIS.

COUNTY COMMISSIONERS' CONTRACTS WITH MEMBER OF BOARD PROHIBITED.

Tallahassee, Fla., Nov. 26, 1907.

Dear Sir:

I am in receipt of a letter from Hon. N. B. Broward, Governor, enclosing your letter of the 18th instant to him, and requesting me to communicate with you upon the subject matter of your letter.

You state that application "was made by one of the Commissioners" to lease the prisoners for the term of their sentence, and that you, as Chairman of the Board of County Commissioners, objected upon the ground that the law as you understood it forbade the Commissioners to enter into any contract with another member of the Board, or other county officer.

Your position was perfectly correct. Sections 3469, 3470 and 3471, of the General Statutes of 1906, are directed against the practice indulged in by some officers of contracting with themselves for supplies or public work. While these sections do not expressly declare that it is unlawful for the Board of County Commissioners to contract with themselves or any member of the Board for the county convicts; yet these sections reflect the law as it existed, and as it now exists, upon the subject of a trustee or an agent making contracts with himself regarding the property committed to his charge. I think that your objection to this contract was well founded. See Lainhart et al. vs. Burr et al., 49 Fla., 315.

Yours very truly,

W. H. ELLIS.

LICENSE TAX ON OCULIST AND OPTICIANS.

Tallahassee, Fla., Dec. 10, 1907.

Dear Sir:

Your letter of the 7th instant received. Under the Statutes of Florida an oculist permanently located is required to pay a license tax of ten dollars, and an oculist traveling from place to place is required to pay fifteen dollars in the county issuing the license, but no additional license can be collected in any other city, town or county.

Opticians permanently located are required to pay five dollars, but a traveling optician is required to pay fifteen dollars in the county issuing the license.

The definition given by Webster of the word "optician" is one "skilled in optics; one who deals in optical glasses and instruments." An optometer is an instrument for measuring distance of vision for the selection of eye glasses. This is an optical instrument and may be used by an optician.

In my judgment there is no necessity for the use of the term "optometrist." An oculist is one skilled in treating diseases of the eye. If one is affected with any disease of the eye he would naturally go to an oculist, who would

treat that disease, and perhaps give him a prescription for glasses; he would take that prescription to an optician for the glasses prescribed.

The statute uses the words "oculist" and "optician." Those words, I think, should be interpreted according to the meaning which is naturally given them. A man who has a dozen or more iron-rimmed spectacles in a show case, which he sells to any customer who may come along, and by trying one pair after another, imagines finally that he is suited, is not, in my judgment, an optician within the meaning of the statute; but one who undertakes scientifically to adjust glasses to the eyes of patrons by a system of measurements or tests, is an optician within the meaning of the statute, and should pay the license.

Yours very truly,

W. H. ELLIS.

ETABLISHMENT OF SPECIAL TAX ROAD DISTRICTS.

Tallahassee, Fla., Dec. 30, 1907.

Dear Sir:

I am in receipt of your letter of recent date asking for my opinion as to whether a "special tax road district" may be established, with such boundaries as may be designated by the persons who desire to establish such road districts.

I note that Mr. Wilson, the attorney for the Commissioners, claims that you can not establish such a sub-road district unless you take in the whole commissioners' district.

Of course, my opinion is not binding upon County Commissioners, for the reason that the law does not require the Attorney General to give opinions to county officials upon any question affecting their official duties. Subject to this statement, I will say to you unofficially that I agree with Mr. Wilson.

Section 872 of the General Statutes, and the subsequent sections down to and including Section 884, prescribe

the method of establishing special tax road districts. I know of no statute which authorizes the establishment of sub-districts; that is to say, districts within those districts within which the county is divided by law.

Section 872 provides that each county shall constitute a road unit. All sub-divisions of a county for road purposes shall be designated as road districts.

Now, Section 840 of the General Statutes provides that each County Commissioner's district in the several counties shall constitute a road district. Referring to Section 872 again, you will find that the road district levying a road district tax is designated as a special tax road district, and the sections referred to constitute the law of this State on the subject of levying special taxes for raising revenue to be expended upon roads within certain defined limits within the county.

Yours very truly,
W. H. ELLIS.

COMPENSATION OF COUNTY COMMISSIONERS.

Tallahassee, Fla., Dec. 30, 1907.

Dear Sir:

The Legislature of 1907 amended Section 775 of the General Statutes relative to the compensation of County Commissioners. The statute provides that the County Commissioners shall receive four dollars per day for each day's service, and ten cents per mile for each mile actually traveled in going to and from the court house.

The language of the proviso of Section 1 of Chapter 5695, Laws of 1907, is remarkable, to say the least of it. It provides that the per diem pay shall not exceed four hundred dollars in counties of twenty-five thousand population, or two hundred dollars in counties of fifteen thousand population, or over one hundred and fifty dollars in counties of less than fifteen thousand population.

What the Legislature intended was that the per annum pay should not exceed the amounts stated, and I have no

doubt that such would be the construction placed upon it by the courts.

It is further provided in the statute that the compensation provided shall apply to services rendered for the inspection of public roads or bridges, or any other service authorized and approved by the Board of County Commissioners, so I think that the compensation of four dollars per day for each day's service is within the meaning of Chapter 5695; provided, that the total year's compensation shall not exceed the amounts specified.

Yours very truly,
W. H. ELLIS.

TRANSFER OF FINE AND FORFEITURE FUND.

Tallahassee, Fla., January 10, 1908.

Dear Sir:

I have your letter of the 8th instant, containing a copy of an order passed by the Board of County Commissioners of Hamilton County, reciting that there was on hand in the fine and forfeiture fund a surplus over and above the amount necessary for all claims or probable claims against such fund, and ordering the County Treasurer to transfer from the fine and forfeiture fund to the special building fund one thousand dollars, and enough from the fine and forfeiture fund to the road fund to take up all outstanding warrants.

You request me to advise you if such order is all that is required under Chapter 5699, Acts of 1907. Chapter 5699, Acts of 1907, is entitled "An Act to Authorize the County Commissioners of Any County in this State to Require and Cause the County Treasurer to Transfer to Other County Funds the Surplus Money Now in the Fine and Forfeiture Fund or that May Hereafter Come Into that Fund from the Hire of State or County Convicts."

Section 1 of the Act provides that whenever it shall appear to the County Commissioners at the close of any year that there is a surplus in the fine and forfeiture fund, over and above the claims or probable claims against the same, and not needed for the purposes of such fund, they

shall have authority to cause to be transferred by the County Treasurer from the fine and forfeiture fund such portion of the fund as has been derived from the hire of State or county convicts to the road fund, or for the erection or repairing of county buildings, or the county school fund or any other county fund.

Section 2 provides that the County Treasurer shall not be allowed any commission for transferring from one fund to another.

It was the purpose of this act to direct that the money in the fine and forfeiture fund, derived from the hire of State or county convicts only, should be transferred to other funds, and then only when it should appear to the County Commissioners that there was a surplus in the fine and forfeiture fund over and above all claims or probable claims against the fund and not needed for its purposes.

The act referred to was evidently drawn with reference to the case of State ex rel. Weeks et al. vs. Dampier et al., decided by the Supreme Court of Florida in March, 1907, and reported in the 43rd Southern Reporter, page 422.

The order, copy of which was contained in your letter, is in my judgment too broad, because the fine and forfeiture fund of Hamilton County is raised by the tax authorized to be levied for such fund, as well as the moneys paid into it on account of fines and forfeitures and the hire of State or county convicts; then the order would include not only the money derived from the hire of State convicts, but the money derived from taxes and from fines and forfeitures. I think that the order should recite the amount of money which has been received into the fund during the year 1907 on account of the hire of State convicts, the amount raised by taxation, and the amount received into the fund on account of fines and forfeitures, and that there is a surplus in such fund over the amount necessary to pay all claims or probable claims against the fund, and that such surplus is not needed for the purposes of such fund. Also, that the order should state that a certain amount of the money derived from the hire of State or county convicts should therefore be trans-

ferred to the special building fund, and that a certain amount derived from the hire of State or county convicts should be transferred to the road fund. These amounts should not be left undetermined or unspecified. The order should show on its face that the amount transferred does not exceed the amount received into the fund from the hire of State convicts.

Yours very truly,
W. H. ELLIS.

REWARD OF OFFICER ARRESTING PARTIES ENGAGED IN THE ILLEGAL SALE OF INTOXICANTS.

Tallahassee, Fla., January 24, 1908.

Dear Sir:

Your letter of the 20th instant has been received. Section 11 of Chapter 5597 provides that one hundred dollars shall be paid to the officer who without warrant enters a building where he has cause to suspect that liquors are kept for sale and to seize the same and arrest the parties engaged in selling the same, but the one hundred dollars must be paid out of the fine collected.

When a person is convicted and sentenced under the provisions of that section to imprisonment in the county jail in default of the payment of the fine it can not be said that the fine has been collected, and I do not believe that the statute contemplates that in such cases the county shall be liable to the sheriff for one hundred dollars.

Under the provisions of Chapter 5690 fifty dollars, in cases where a person is convicted of selling whiskey without a license, is required to be added to the costs and expenses of the prosecution, which sum of fifty dollars is to be paid to the person furnishing the testimony upon which the conviction is secured. That act expressly provides that when this sum can not be collected from the person or persons who may be convicted that it should in

that case be paid by the county in which the conviction is had.

I am of the opinion that if the sheriff or his deputy or any other officer or person furnishing the testimony upon which the conviction is effected is entitled to the fifty dollars, which amount should be included in the costs and expenses of the prosecution, and if it is a case in which the sheriff or his deputy without a warrant entered a building in which he had reason to suspect that whiskey was sold, he should be paid one hundred dollars more in case of conviction, if the fine imposed is collected.

In so far as these acts provide for compensation to the sheriff for services and the payment of fifty dollars to the person furnishing testmony, there is no conflict.

Yours very truly,

W. H. ELLIS.

TAX ON GREEN GROCERS.

Tallahassee, Fla., January 24, 1908.

Gentlemen:

Your letter of the 7th instant has been received. The Legislature of 1907, in changing the license tax law, enacted a statute which clearly draws a distinction between green grocers and dealers in fresh fruits and nuts and merchants, storekeepers and druggists.

A green grocer, who may also be a dealer in fresh fruits and nuts, is required to pay a license tax of three dollars, while a merchant is required to pay a license tax of three dollars for each one thousand dollars or fraction of one thousand dollars of stock of merchandise.

If it had been the purpose of the Legislature to have exempted merchants from paying the license tax of a green grocer, a provision similar to that immediately following the provision for a license tax against merchants would have been incorporated in the act.

A tax of ten dollars is imposed in Schedule A of the act upon sewing machine agents, but the act provides that

a merchant who keeps sewing machines in stock for sale in the same manner as other merchandise shall not be taxed as a sewing machine agent or dealer, but no such provision is incorporated in the law regarding merchants who deal in green groceries, fresh fruits and nuts.

A tax upon green grocers and merchants is included in Schedule A of the act, Section 5. The license taxes in that schedule are defined as individual license taxes, and are required to be paid by the persons engaged in, managing or transacting the several occupations or professions named.

I think, therefore, that Mr. Croom's letter of the 30th is in the main correct.

Yours very truly,
W. H. ELLIS.

SHERIFF'S MILEAGE—GAME WARDEN.

Tallahassee, Fla., January 27, 1908.

Dear Sir:

I am in receipt of your letter of the 22nd instant, and in reply beg to say that in the case submitted by you the sheriff would not be authorized to charge mileage. The statute expressly provides that no constructive mileage shall be charged and that no fees shall be allowed except when they are expressly provided by law.

Replying to your second question. Under Chapter 5435 the Governor may, under the condtions prescribed, appoint a game warden for a county, and that game warden has the power to arrest and take before a magistrate any person violating any of the laws of the State for the protection and preservation of fish and game.

Under Section 3 it is the duty of the game warden when his attention is directed to any violation of the law for the protection and preservation of fish and game to make complaint to the magistrate.

The sheriff under the law is the executive officer of the court, and it is his duty to execute warrants and serve

process of such courts, and for that service he is allowed certain fees, including mileage.

Whenever a complaint is made against a person, either by the game warden or some other individual, that another person has violated the laws of the State for the protection and preservation of fish and game, the magistrate issues his warrant for such person and it is placed in the hands of the sheriff and he executes it by arresting the person against whom it is issued, and for such service he is entitled to receive the fees allowed by law, together with the mileage prescribed. This should not be deducted from the compensation allowed the game warden by the County Commissioners.

A game warden has the power to arrest a person violating the law for the protection and preservation of fish and game, but it is not his duty to execute warrants issued by magistrates for the apprehension of persons charged with violating such law.

Yours very truly.

W. H. ELLIS.

LICENSE TAX ON REAL ESTATE AGENTS, RENT COLLECTORS AND LAWYERS.

Tallahassee, Fla., January 27, 1908.

Dear Sir:

Chapter 5397 of the Laws of 1907, in Schedule A, imposes individual license taxes upon persons engaging in the business of agent for real estate, including renting and rent collecting, and a separate license tax upon persons engaging in the business of practicing law.

I should think that a lawyer who paid a license tax as a lawyer would be entitled to collect rents for his clients, examine abstracts of title to real estate and represent his clients in the matter of any purchase or sale of real estate without being required to take out a license as a real estate agent, but if, independently of his practice as a lawyer, he undertakes to do the business of a real estate

agent, such as offering to collect rents for persons without reference to the relationship that might exist between them and himself as client and attorney, holds tracts or lots of land for sale to any person who might apply to purchase the same, and otherwise hold himself out as a real estate agent, he would have to take out the license prescribed by law.

Yours very truly,
W. H. ELLIS.

TAX ASSESSORS' COMMISSIONS.

Tallahassee, Fla., January 24, 1908.

Dear Sir:

Section 63 of Chapter 5596 prescribes the commissiones which shall be paid to the County Tax Assessor, and the method which shall be pursued in the settlement with such assessors. That section provides that when the tax book is received by the Comptroller from the County Assessor, and is examined and found to be correct, the Comptroller shall issue his warrant for four-fifths of the amount of the commissions due the County Assessor of Taxes, reserving the payment of the remaining one-fifth until a report of errors and double assessments is approved by the County Commissioners and a copy therewith filed with the Comptroller.

The section provides that the County Commissioners, in their settlement with the County Assessor of Taxes, shall proceed in the same manner.

In effecting a settlement with you under the law of 1906 the County Commissioners should have followed the statute. They have no authority, in my judgment, to withhold any portion of your commissions except that portion which the statute directs them to withhold, viz: one-fifth of the amount due, which is held back for the purpose of balancing any overplus in the commissions allowed by reason of errors and double assessments.

Yours very truly,
W. H. ELLIS.

REGISTRATION OF ELECTORS IN EXTENDED CORPORATE LIMITS OF THE TOWN OF CARRABELLE.

Tallahassee, Fla., August 14, 1907.

Dear Sir:

I am in receipt of your letter of the 9th instant, asking me to advise you if certain citizens of Franklin County, who have been residing in that county for over six months, and who, under Chapter 5795, Laws of 1907, became citizens of the town of Carrabelle by reason of the extension of the corporate limits of the said town to take in the territory in which such citizens were living, are entitled to register in order to participate in a municipal election to be held in the town of Carrabelle.

The Attorney General is not by law the legal adviser of county and municipal officers, and consequently his opinions are of no binding force whatever; in fact, they have no more weight than the opinion of any other attorney whose judgment may be obtained on any proposition submitted. I remind you of his in order that you may not attach too great a weight to the opinion I express.

The town of Carrabelle was incorporated in 1893, and by a provision of the act incorporating the town, its officers were vested with the same powers as the officers of other towns incorporated under the general act. Section 1010 of the General Statutes prescribes the qualifications of electors, and one of those qualifications is, that a person shall have resided in the city or town for six months next preceding the election, and must have been registered in the municipal registration as shall be prescribed by the ordinances. Section 1011 vests in the town council full power to establish rules and regulations for the registration of voters.

The Acts of 1907 extend the boundaries of the town of Carrabelle. That act was approved June 7th, and went into effect immediately. I should say that no one who, prior to the passage of that act, lived outside of the limits of the town, but who became a citizen of the town when

the limits are extended by the said act, can claim to be a resident of the town until the expiration of six months from the date of the passage of the act extending the limits of the town.

Yours very truly,
W. H. ELLIS.

DISCRIMINATION BY COMMON CARRIERS.

Tallahassee, Fla., Sept. 10, 1907.

Dear Sir:

Your letter of the 3rd instant has been received. I do not know why the act referred to in your letter should give rise to so much confusion and uncertainty.

Since 1893 there has been a statute in this State against discrimination by common carriers in favor of one against another.

For a long time the prevailing doctrine was that there was no rule against discriminations as such, unless it was shown that the higher charge was unreasonable.

In the case of ex parte Benson & Co., 18 S. C., 38, Chief Justice Simpson said (in effect):

> "A difference in the charge does not *per se* invalidate the contracts as inequitable and against public policy; but to have this effect there must be an element of unreasonableness in the charge itself, as applied to the services rendered, between the parties to the contract, and without comparison to the charges against others. It is too vague to say that the contract is equitable and against public policy. To be void on such ground it must contravene some well-established doctrine of public policy prohibiting it."

Judge Wallace, in the case of Menacho vs. Ward, 27 Fed., 529, said:

> "Unquestionably a common carrier is always en-

titled to a reasonable compensation for his services. Hence, it follows, that he is not required to treat all those who patronize him with absolute equality. It is his privilege to charge less than fair compensation to one person, or to a class of persons, and others can not justly complain so long as he carries on reasonable terms for them."

Judge Pattison said, in 13 Colo., 181 (in effect):

"It is a well settled elementary principle of the law of common carriers that mere inequalities in charges do not amount to unjust discrimination. The requirement of the law is that the charge made shall be reasonable."

But this doctrine no longer obtains, and any discrimination is now regarded as illegal. Beale and Wyman, in their work on "Railroad Rate Regulation," say:

"By the modern way of looking at this matter, ever, discrimination is illegal. In last analysis, it is public opinion which has dictated this rule, although it is not too much to claim that this rule is a logical development of the law of public duty. So involved are the services of the common carrier, directly or indirectly, in all modern businesses, that it is already felt to be unbearable if transportation is not open to all upon equal terms. And the rule must be exact. It is not enough to say that all must be given rates which are not unreasonable, for by that principle in many cases unequal rates might be justified. What public opinion requires today is that the rates shall be equal."

The rule now forbidding discriminations goes beyond the former rule requiring reasonable charges. The necessity for a rule against unjust discrimination is evident. Discrimination between competitors fosters monopolies, tends to build up the fortunes of a favored few at the

expense of many others, is repulsive to all sense of fairness, and utterly inconsistent with a system which tries to secure equal privileges to all.

The statute of 1893 sought to prohibit such discrimination by common carriers, and the Legislature, at the recent session (1907), sought, by Chapter 5621, to pronounce more clearly the policy of this State against such unfair practice on the part of common carriers as that of granting favors in the matter of public service to one person which they denied to others under the same circumstances; so that act provides that if any common carrier, engaged in the business as such in the State of Florida shall, directly or indirectly, by any special rate, rebate, drawback or other device, charge, demand, collect or receive from any corporation, person or persons, a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, that such common carrier charges, demands, collects or receives from any other person or persons for doing it, him, her, or them, a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions, such common carrier shall be guilty of unjust discrimination, which is thereby prohibited and declared to be unlawful.

It is clear to my mind that all differences in charges are not necessarily discriminations; but, as was said by the Supreme Court of the United States in 181 U. S., 92, the principle of equality does forbid any difference in charges which is not based upon differences of service, and it must have some reasonable relation to the amount of difference, and can not be so great as to produce an unjust discrimination.

Beale and Wyman point out that differences may be made where the service is identical, but the position of the applicants different, and when the services are different and the position of the applicants the same, without an infraction of the rule against unjust discrimination.

This idea pervades Chapter 5621, so it appears to me,

It could not have been the purpose of the Legislature to prevent common carriers from transporting their own employes—whether president or brakeman, attorney or physician, over their lines whenever the business of the company demands the services of such employes; nor could it have been its purpose to prevent common carriers from paying in part, or wholly, for services rendered to such carriers by transporting the individual over its track, so that the transportation thus furnished shall not exceed the value of the services rendered to that extent, that it would be an unjust discrimination in favor of the one person or against other persons.

In a letter written by me to Mr. W. F. Stovall, under date of August 30th, I said that in my opinion Chapter 5621 did not apply to cases where, in consideration for services rendered, or to be rendered, by another, a railroad company issued passes to that other in payment for such services. I did not mean by that language that the act did not prevent any and all discriminations that may be made in favor of all passengers, whether the consideration paid by them be in money or other thing of value. I think that where a railroad company issues transportation in consideration for services rendered, as distinguished from money, it will be necessary for the railroad company to so adjust the transportation issued to the value of the service rendered as to avoid unjust discrimination.

As to the matter of transporting postal clerks who are engaged in the business of assorting and distributing the United States mail, that could not be regarded as a violation of the act. It seems to me that the situation or position of such person is so different from that of other persons who are transported by common carriers for the consideration usually charged for such service, that it is unnecessary to point it out; nor do I regard the contracts of railroad companies with telegraph companies, such as outlined in your letter, as infraction of the law. The service rendered—as you say—is reciprocal, and the value of it must be largely a matter of agreement between the two companies.

As to the representatives of transfer companies being allowed to board trains and issue checks for baggage and omnibus transportation to their respective destinations after leaving the car, I think that where this privilege is accorded to one transfer agent and denied to another, that there would be a discrimination such as the statute contemplates.

The controlling principle seems to me to be, that where the position of the applicants is the same, and the service to be rendered is the same, the railroad company is not authorized to make any discrimination as to the charge exacted or to be exacted for the service rendered.

Yours very truly,

W. H. ELLIS.

LICENSE TAX ON FURNITURE DEALERS.

Tallahassee, Fla., February 19, 1908.

Dear Sir:

The Act of 1907 imposes a license tax upon furniture dealers who sell upon the instalment plan. If a merchant is handling furniture, and sells only for cash or in the usual course of trade like other goods are sold, he is not required to pay the tax imposed upon furniture dealers who sell on the instalment plan, but is required to pay the tax imposed upon merchants, which tax is based upon the value of the merchandise.

Yours very truly,

W. H. ELLIS.

INTOXICATING LIQUORS.

Tallahassee, Fla., March 7, 1908.

Dear Sir:

Section 3562 of the General Statutes prohibits any person in this State from shipping by any common carrier any spiritous, vinous or malt liquors, wines or beer into

any county or election district where prohibition under local option statutes is enforced, without having a bona fide order from a bona fide purchaser thereof.

Section 3564 prohibits any agent or seller from soliciting or taking orders for such liquors upon the premises or the lands of the owner or proprietor of a mill, factory plant or still, or upon any public or private road passing through such premises or lands, in any county which has voted against the sale of such liquors.

The sections referred to appear to prohibit the soliciting of such orders at the places named, but in my judgment they do not prevent the delivery by the express company of such packages to a bona fide purchaser who had previously ordered the same.

Yours very truly,

W. H. ELLIS.

CATCHING FISH WITH CERTAIN DEVISES PROHIBITED.

Tallahassee, Fla., April 24, 1908.

My Dear Sir:

Replying to your letter of recent date. Section 3767 of the General Statutes prevents the stopping of any creeks, rivers or bayous with any seine, gill-net, stop-net, or other kind of net, finger trap, or any other device whatever for the catching of food fishes.

Section 3768 prevents the hauling or dragging of any seine or net of any seine or net of any kind for the catching of food fishes between May 1 and November 1.

Section 3769 provides that the two preceding sections shall not operate as to the catching of shad, or to prevent the use of a seine when used by individuals or assemblies on occasions of picnics or public dinners, for their own consumption only, or to prevent any person residing in this State from catching sturgeon.

Section 3765 prohibits the catching of food fishes in any fresh water lakes with any seine or net, or by shooting, gigging or by any set device; but that section contains a

proviso to the effect that fishing with seines or otherwise for home consumption, picnics, or upon one's own land, is not prohibited by that section.

From the reading of these statutes I am of the opinion that fishing with traps in fresh water streams for home consumption is not prohibited by law.

Yours very truly,

W. H. ELLIS.

CUSTODY OF BALLOTS, POLL LISTS, REGISTRATION BOOKS AND RETURNS OF PRIMARY ELECTIONS.

Tallahassee, Fla., June 12, 1908

Dear Sir:

Replying to your letter of a few days ago, I will state that under the primary law the ballot boxes, original ballots and poll lists, are returned by the officers holding the election to the committee calling the primary election.

While the registration books or registration lists which may have been furnished to the officers holding the primary election are returned to the Supervisor of Registration, the ballots, poll list and the report of the officers holding the primary election are the property of the committee calling the election, and such committee is at liberty to dispose of the poll list as it sees proper.

If such committee places the poll list in the hands of the Supervisor of Registration, there is no statute preventing the Supervisor of Registration from disposing of the poll list as he sees proper.

The returns made by the officers holding a general election under the laws of this State are required to be made as follows:

Certificates of the result of the election in the particular precinct are made up and signed by the inspectors and clerk, and one of the certificates is required to be delivered, securely sealed, to the Supervisor of Registration and the other to the County Judge, while the poll list, oaths

of the inspectors and clerks, together with the ballot box, ballots, ballot stubs, memoranda and papers of all kinds used by the inspectors and clerks are required to be transmitted, sealed up by the inspectors, to the Supervisor of Registration to be filed in his office.

These documents become public records, and, of course, the Supervisor of Registration has no authority under the law to dispose of them.

Yours very truly,
W. H. ELLIS.

FEES FOR CONVEYING PRISONERS TO AND FROM JAIL.

Tallahassee, Fla., April 24, 1908.

Dear Sir:

In regard to the matter of fees for conveying prisoners to and from jail, I beg to say that the General Statutes, Section 1683, allows a mileage of ten cents each way for commitment of prisoner to jail. It also allows ten cents per mile to and from the jail for the removal of prisoner. The section provides also for the actual necessary expenses, to be fixed by the judge, for safe-keeping and punishment of prisoners. In addition to all this the statute allows the Sheriff a mileage of ten cents each way from the court house door to the point of execution of process.

In my opinion, the allowance of ten cents per mile, which the statute provides for commitment of prisoner to jail and the removal of a prisoner to and from the jail, applies to each individual prisoner. The fact that there happens to be two or more prisoners arrested under one warrant charged jointly with the commission of an offense, does not relieve the Sheriff of any expense in the matter of transporting those prisoners to the jail or removing them to and from the jail.

Of course, no constructive mileage should be charged, but I do not construe the act to mean that the Sheriff is

required to transport two or more prisoners from the point of arrest to the jail for the same mileage that he would receive in transporting one prisoner, because it is obvious that the expense upon the Sheriff of transporting two or more prisoners is necessarily greater than the transportation of one prisoner. I herewith return the letter of Mr. Whittaker.

Yours very truly,
W. H. ELLIS.

DUTIES OF GAME WARDEN.

Tallahassee, Fla., July 29, 1908.

Dear Sir:

Replying to your letter of some days ago asking what, in my opinion, your duties are as game warden, etc., I beg to advise that your duties are prescribed by Section 983 of the General Statutes, which reads as follows:

> "The duty of fish and game wardens shall be to enforce the fish and game laws of the State of Florida, for the protection of fish, oysters and game in the counties for which they shall be appointed, and to prosecute all violations of such laws. And for the better enforcement of the law, they may appoint deputies residing at convenient localities."

Your powers are defined by Section 985 of the General Statutes, which reads as follows:

> "The wardens and their deputies shall have power to arrest and take before a magistrate and subject to trial, according to law, any person violating any of the fish and game laws of the State. And the magistrate may order the seizure of any of the implements used by the offenders in violation of such laws."

In my opinion neither you nor your deputies are authorized to carry concealed weapons, because the last paragraph of Section 3262 of the General Statutes, which Sec-

tion provides punishment for carrying concealed weapons, reads as follows:

> "Provided, That nothing in this section shall be considered as applying to Sheriffs, city or town marshals, policemen, constables, or United States Marshals or their deputies."

The failure to include game wardens among those officers exempted from the operation of that section of the statute, was evidently an oversight on the part of the Legislature, but the matter can not be remedied at this time.

Yours very truly,
W. H. ELLIS.

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